

# **INFORMATION TO OFFERORS OR QUOTERS** **SECTION A - COVER SHEET**

1. SOLICITATION NUMBER

**SP0600-99-R-0005**

2. (X one)

a. SEALED BID

**X**

b. NEGOTIATED (RFP)

c. NEGOTIATED (RFQ)

## **INSTRUCTIONS**

NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.

You are cautioned to note the "Certification of Non-Segregated Facilities" in the solicitation. Failure to agree to the certification will render your reply non responsive to the terms of solicitations involving awards of contracts exceeding \$25,000 which are not exempt from the provisions of the Equal Opportunity clause.

"Fill-ins" are provided on the face and reverse of Standard Form 18 and Parts I and IV of Standard Form 33, or other solicitation documents and Sections of Table of Contents in this solicitation and should be examined for applicability.

See the provision of this solicitation entitled either "Late Bids, Modifications of Bids or Withdrawal of Bids" or "Late Proposals, Modifications of Proposals and Withdrawals of Proposals."

When submitting your reply, the envelope used must be plainly marked with the Solicitation Number, as shown above and the date and local time set forth for bid opening or receipt of proposals in the solicitation document.

If NO RESPONSE is to be submitted, detach this sheet from the solicitation, complete the information requested on reverse, fold, affix postage, and mail. NO ENVELOPE IS NECESSARY.

Replies must be set forth full, accurate, and complete information as required by this solicitation (*including attachments*). The penalty for making false statements is prescribed in 18 U.S.C. 1001

### 3. ISSUING OFFICE (*Complete mailing address, including Zip Code*)

ATTN: CAROL ROBERSON/DESC-FPA  
DEFENSE FUEL SUPPLY CENTER  
8725 JOHN J. KINGMAN ROAD, SUITE 4950  
FORT BELVOIR, VA 22060-6222

TELEPHONE: 703-767-9329

FAX: 703-767-8506

PP: 6.1

### 4. ITEMS TO BE PURCHASED (*Brief description*)

Operation, maintenance, product quality surveillance, inventory control and accounting, security, safety, plant protection and environmental protection services for Defense Fuel Support Points (DFSPs) **Point Loma, CA (San Diego), Puget Sound, WA, and Pearl Harbor, HI.**

**PERIOD OF PERFORMANCE:** August 1, 1999 through August 1, 2001 with one three-year renewal option.

### 5. PROCUREMENT INFORMATION (*X and complete as applicable*)

**X** a. THIS PROCUREMENT IS UNRESTRICTED

b. THIS PROCUREMENT IS A \_\_\_\_\_% SET-ASIDE FOR ONE OF THE FOLLOWING (*X One*). (*See Section I of the Table of Contents in this solicitation for details of the set-aside.*)

(1) Small Business

(2) Labor Surplus Area Concerns

(3) Combined Small Business/Labor Area Concerns

### 6. ADDITIONAL INFORMATION

**NOTICE: THE DEFENSE FUEL SUPPLY CENTER (DFSC) NAME HAS CHANGED ITS NAME TO DEFENSE ENERGY SUPPORT CENTER (DESC).**

a. This procurement is being conducted in accordance with the provisions of Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities." The solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded. See Clause L112 for detailed information regarding cost comparison.

b. See Clauses L54.01 and L197.100 for information concerning site visits and preproposal conferences. If you wish to attend, please fax (703-767-9338) or e-mail (croberson@desc.dla.mil) your name, title, company name and address, phone number, e-mail address, and any questions or issues you wish addressed at the conference(s). Also specify which conference(s)/site visit(s) you wish to attend. This information must be received by **October 30, 1998.**

a. NAME (*Last, First, Middle Initial*)

ROBERSON, CAROL

b. ADDRESS (*Including Zip Code*)

ATTN: CAROL ROBERSON/DESC-FPA

DEFENSE ENERGY SUPPORT CENTER

c. TELEPHONE NUMBER (*Including Area Code and Extension*) (*NO COLLECT CALLS*) 703-767-9329

8725 JOHN J. KINGMAN ROAD, SUITE 4950  
FORT BELVOIR, VA 22060-6222

8. REASONS FOR NO RESPONSE ( <i>X all that apply</i> )			
<input type="checkbox"/>	a. CANNOT COMPLY WITH SPECIFICATIONS		<input type="checkbox"/> b. CANNOT MEET DELIVERY REQUIREMENTS
<input type="checkbox"/>	c. UNABLE TO IDENTIFY THE ITEM(S)		<input type="checkbox"/> d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
<input type="checkbox"/>	e. OTHER ( <i>Specify</i> )		
9. MAILING LIST INFORMATION ( <i>X one</i> )			
<input type="checkbox"/>	YES	<input type="checkbox"/> NO	WE DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED.
10. RESPONDING FIRM			
a. COMPANY NAME		b. ADDRESS ( <i>Including Zip Code</i> )	
c. ACTION OFFICER			
(1) Typed or Printed Name ( <i>Last, First, Middle Initial</i> )		(2) Title	(3) Signature
			(4) Date Signed (YY-MM-DD)

DD Form 1707 Reverse, MAR 90

FOLD

FOLD


OLD

FOLD

FROM

AFFIX  
STAMP  
HERE

SOLICITATION NUMBER	
SP0600-99-R-0005	
DATE (YYMMDD)	LOCAL TIME
99-01-15	3:00 PM

  
**ATTN: BID CUSTODIAN, DESC-PCC, ROOM 3729**  
**DEFENSE ENERGY SUPPORT CENTER**  
**8725 JOHN KINGMAN ROAD, SUITE 4950**  
**FORT BELVOIR VA 22060-6222**

- c. Facsimile proposals are authorized (see Clause L2.11-2). All facsimile proposals must be faxed to 703-767-8506 and must be received at DESC by the closing date specified. Do not return the entire solicitation package. Simply complete and return the specified number of copies of required submittals, as described in clause L201.100. . The clauses that require offeror's completion are found in the Offeror Submission Package (Attachment 5). Please insure you complete all applicable representations, certifications in the Offeror Submission Package and that you have provided all information requested in Clause L201.100. Your Cage Code must be inserted in Block 15A of the SF33 in the Offeror Submission Package (See Clause L205). Your price must be inserted in Clause B33.01 in the Offeror Submission Package. The Line Item 0001 price must include any G&A and profit associated with all line items. Proposed prices that are unrealistically low may be considered an indication of lack of understanding of the solicitation requirements. Attach the insurance binder required by Clause I131 to your Offeror Submission Package. The required insurance coverage is detailed in Clauses H51.03.
- d. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.
- e. Unless you specifically state otherwise, your offer is assumed to accept all terms and conditions of this solicitation. Any exceptions to any part of this solicitation must be specifically identified in a cover letter to your proposal.
- f. The Government intends to evaluate proposals and award a contract after written or oral discussions with all responsible offerors who submit proposals within the competitive range (See Clause L2.05-8). The source selection decision will be based on a combination of operational capability, past performance, price and subcontracting procedures/intentions (See Clause M100.100). In the event that the winning contractor's proposal is successful in the Government cost comparison, the resulting type of contract will be a two-year fixed price with cost reimbursable provisions, plus one three-year renewal option.
- g. Any contract awarded to a contractor who, at the time of award was suspended, debarred, or ineligible for receipt of contract with a Government agency is voidable at the option of the Government.
- h. Care should be taken to mail correspondence relating to this solicitation or resulting contract to the appropriate office as indicated in the applicable clauses.
- i. The SIC Code for this acquisition is 4226 (See Clause K1.01 in the Offeror Submission Package). The point of contact for the DESC Small Business Office is Ms. Kathy Williams (703) 767-9465.

<b>SOLICITATION, OFFER AND AWARD</b>				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1   81		
2. CONTRACT NO.		3. SOLICITATION NO. SP0600-99-R-0005		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED October 13, 1998		6. REQUISITION/PURCHASE NO. SCO600-99-0381/DFSP Point Loma, CA SCO600-99-0382/DFSP Puget Sound, WA SCO600-99-0383/DFSP Pearl Harbor, HI		
7. ISSUED BY Defense Energy Support Center 8725 John J Kingman Road, Suite 4950 Ft. Belvoir, Alexandria, VA 22060-6222 PP: 6.1 Buyer/Symbol: CAROL ROBERSON/DESC-FPA Phone: 703-767-9329 Fax: 703-767-8506/croberson@desc.dla.mil				CODE SCO600		8. ADDRESS OFFER TO (If other than item 7) ATTN: BID CUSTODIAN, DESC-PCC, RM. 3729 Defense Energy Support Center 8725 John J Kingman Road, Suite 4950 Ft. Belvoir, Alexandria, VA 22060-6222 Fax: 703-767-8506 Verification: 703-767-8758				
NOTE: In sealed bid solicitation "offer" and "offeror" mean "bid" and "bidder".										
SOLICITATION										
9. Sealed offers in original and <u>1 (one)</u> copies for furnishing the supplies or services in the Schedule will be received at the place specified, in the depository located in <b>DESC-PCC; Room 3729</b> until <b>3:00 PM</b> local time <b>January 15, 1999.</b> (hour) (date) CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L. Provision No. 52.215-10. All offers are subject to all terms and conditions contained in this solicitation. See Clause L2.05-8										
10. FOR INFORMATION CALL:			A. NAME  CAROL ROBERSON			B. TELEPHONE NO. (Include Area Code) (NO COLLECT CALLS)  703-767-9329				
11. TABLE OF CONTENTS										
(x)	SEC.	DESCRIPTION			PAGE	(x)	SEC.	DESCRIPTION		
PART I - THE SCHEDULE					PART II - CONTRACT CLAUSES					
X	A	SOLICITATION/CONTRACT FORM <b>SEE COVER SHEET</b>			1	X	I	CONTRACT CLAUSES		
X	B	SUPPLIES OR SERVICE AND PRICES/COSTS			4	PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.				
X	C	DESCRIPTION/SPECS/WORK STATEMENT			Atch 1-3	X	J	LIST OF ATTACHMENTS		
	D	PACKAGING AND MARKETING				PART IV - REPRESENTATIONS AND INSTRUCTIONS				
X	E	INSPECTION AND ACCEPTANCE			5-6	X	K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS		
X	F	DELIVERIES OR PERFORMANCE			6			71 (list) OSP full text		
X	G	CONTRACT ADMINISTRATION			6-7	X	L	INSTRS., COND., AND NOTICES TO OFFERORS		
X	H	SPECIAL CONTRACT REQUIREMENTS			8-9		M	EVALUATION FACTORS FOR AWARD		
OFFER (Must be fully completed by offeror)										
NOTE: ITEM 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.										
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____* calendar days (60 calendar days unless a different period is inserted by the offer) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule. * See Clause L1.02										
13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause I4)			10 CALENDAR DAYS %		20 CALENDAR DAYS %		30 CALENDAR DAYS %		CALENDAR DAYS %	
14. ACKNOWLEDGMENT OF AMENDMENTS The offeror acknowledges receipt of amendments to the solicitation for offerors and related documents numbered and dated:			AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	
15A. NAME OF OFFEROR (Type or print)		ADDRESS OF OFFEROR (Type or print)		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)		
15B. TELEPHONE NO. (Include area code)		15C. CHECK IF REMITTANCE ADDRESS <input type="checkbox"/> Is different from above - enter such address				17. SIGNATURE		18. OFFER DATE		
AWARD (To be completed by Government)										
19. ACCEPTED AS TO ITEM NUMBERED				20. AMOUNT		21. ACCOUNTING AND APPROPRIATION NUMBERED				
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 253(c)( )						23. SUBMIT INVOICES TO ADDRESS SHOWN IN IN BLOCK 25 (4 copies unless otherwise specified)		ITEM		
24. ADMINISTRATION BY (If other than Item 7)				CODE		25. PAYMENT WILL BE MADE BY		CODE		
26. NAME OF CONTRACTING OFFICER (Type of print)				27. UNITED STATES OF AMERICA BY: _____ (Signature of person authorized to sign)				28. AWARD DATE		
IMPORTANT - Award will be made on this form, or on the Standard Form 26, or by other authorized official written notice.										

**CLAUSE INDEX****SECTION B - SUPPLIES/SERVICES AND PRICES/COST**

B33.01	SERVICES TO BE FURNISHED AND PRICES (MULTIYEAR) (GOCO) (DESC JUL 1993) .....	4
--------	--	---

**SECTION C - DESCRIPTION/SPECIFICATIONS**

DFSP POINT LOMA, CA PERFORMANCE WORK STATEMENT .....	ATTACHMENT 1
DFSP PUGET SOUND, WA PERFORMANCE WORK STATEMENT .....	ATTACHMENT 2
DFSP PEARL HARBOR, HI PERFORMANCE WORK STATEMENT .....	ATTACHMENT 3

**SECTION E - INSPECTION AND ACCEPTANCE**

E1.01	CONTRACTOR RESPONSIBILITY FOR GOVERNMENT INSPECTION OF SERVICES (DESC AUG 1981).....	5
E5.03	INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996).....	5
E22.01	QUALITY REPRESENTATIVE (DESC JUL 1992).....	5
E50	RESPONSIBILITY FOR SUPPLIES (APR 1984) .....	5
E200	INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984).....	6

**SECTION F - DELIVERIES OR PERFORMANCE**

F200	DELIVERY PERIOD AND PERFORMANCE REQUIREMENTS (DESC APR 1997).....	6
------	---	---

**SECTION G - CONTRACT ADMINISTRATION DATA**

G1	POSTAWARD CONFERENCE (DEC 1991).....	6
G3	INVOICE NUMBERING REQUIREMENTS (DESC DEC 1994) .....	6
G3.01	PAYMENT DUE DATE (DESC OCT 1988) .....	6
G9.06	ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC OCT 1997) .....	6
G9.10	PAYMENT BY ELECTRONIC FUNDS TRANSFER (CCR) (JUN 1998) .....	7
G17.01	CONTRACTOR'S ACCOUNTING SYSTEM (DESC FEB 1992) .....	7
G21	DESIGNATION OF PROPERTY ADMINISTRATOR (DESC MAR 1995) .....	7
G22	DESIGNATION OF THE DEFENSE ENERGY REGION (DESC JUL 1997) .....	7
G148.05	SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DESC MAR 1996).....	7

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

H11	GUARD SERVICE (DESC MAR 1982).....	8
H20	REPORTS OF GOVERNMENT PROPERTY (MAY 1994).....	8
H51.03	INSURANCE REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS (DESC AUG 1998).....	9

**SECTION I - CONTRACT CLAUSES**

I1	DEFINITIONS (OCT 1995) .....	9
I1.01-4	DEFINITIONS (CONT'D) (STORAGE) (DESC JAN 1996).....	10
I1.02	COMPUTER GENERATED FORMS (JAN 1991) .....	11
I1.06	CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (JUL 1997) .....	11
I1.07	REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998) .....	12
I1.19	AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) .....	12
I1.20	CLAUSES INCORPORATED BY REFERENCE (FEB 1988).....	12
I1.22	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) .....	12
I1.22-1	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) .....	13
I1.24	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997) .....	13
I1.26	REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG 1992).....	15

I2	CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992) .....	15
I2.06	CHANGES - FIXED-PRICE (ALT II) (APR 1984) .....	16
I3	EXTRAS (APR 1984) .....	16
I3.01	PROMPT PAYMENT (JUN 1997) .....	16
I4	DISCOUNTS FOR PROMPT PAYMENT (APR 1989) .....	19
I7	PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996) .....	19
I8.02	ASSIGNMENT OF CLAIMS (ALT I) (APR 1984) .....	19
I11.03	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) .....	19
I11.04	BANKRUPTCY (JUL 1995) .....	20
I12.01	DISPUTES (OCT 1995) .....	20
I12.03	PROTEST AFTER AWARD (AUG 1996) .....	21
I15.03	CONVICT LABOR (AUG 1996) .....	21
I16.01	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995) .....	22
I18	SPECIAL PROHIBITION ON EMPLOYMENT (JUN 1997) .....	22
I18.01	RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (DEC 1991) .....	23
I18.03	EQUAL OPPORTUNITY (APR 1984) (DEVIATION) .....	23
I18.06	DISPLAY OF DOD HOTLINE POSTER (DEC 1991) .....	24
I20	COVENANT AGAINST CONTINGENT FEES (APR 1984) .....	24
I24	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) .....	25
I25	AUTHORIZATION AND CONSENT (JUL 1995) .....	25
I27	GRATUITIES (APR 1984) .....	25
I28.16	FEDERAL, STATE, AND LOCAL TAXES (JAN 1991) .....	25
I32	CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997) .....	26
I33	INTEREST (JUN 1996) .....	27
I36	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996) .....	27
I43.01	LIMITATION OF LIABILITY - SERVICES (FEB 1997) .....	29
I90	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998) .....	29
I94.01	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997) .....	29
I95	AUDIT AND RECORDS -- NEGOTIATION (AUG 1996) .....	30
I96.02	PRICING ADJUSTMENTS (DEC 1991) .....	31
I97.02	SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997) .....	31
I98	PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995) .....	31
I100	SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989) .....	32
I102	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989) .....	35
I102.01	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989) .....	36
I102.02	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DESC JUL 1988) .....	36
I102.03	DRUG-FREE WORK FORCE (SEP 1988) .....	37
I102.04	DRUG-FREE WORKPLACE (JAN 1997) .....	37
I114	GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989) .....	38
I116	RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DESC APR 1997) .....	40
I117	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) .....	40
I119.04	PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997) .....	40
I121	CUSTODY OF PETROLEUM PRODUCT (DESC APR 1968) .....	43
I122	USE OF FACILITIES (DESC APR 1984) .....	43
I123	TITLE TO FACILITIES (DESC JUL 1991) .....	43
I124	LIABILITY FOR THE FACILITIES (JAN 1997) (DEVIATION) .....	43
I126	INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (JAN 1991) .....	45
I129	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984) .....	45
I131	INSURANCE - WORK ON A GOVERNMENT INSTALLATION (JAN 1997) .....	45
I132.02	ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) .....	45
I136	COMPETITION IN SUBCONTRACTING (DEC 1996) .....	46
I168	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) .....	46
I169	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) .....	47
I170	UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS (JUN 1997) .....	47
I171	SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998) .....	48
I171.01-1	UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996) .....	50
I171.03	SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 1996) .....	51
I171.06	INCENTIVE FOR SUBCONTRACTING WITH SMALL BUSINESSES, SMALL DISADVANTAGED BUSINESSES, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS (NOV 1995) .....	51
I171.07	LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (AUG 1998) .....	52
I176	COST ACCOUNTING STANDARDS (APR 1998) .....	52

I176.03	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998) .....	53
I176.05	ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996).....	54
I178	WASTE REDUCTION PROGRAM (MAY 1995) .....	55
I180	CLEAN AIR AND WATER (APR 1984) .....	55
I180.02	ENVIRONMENTAL PROTECTION (STORAGE) (DESC MAY 1987) .....	56
I181	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998).....	56
I185.01	SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992).....	57
I190.02	HAZARDOUS WASTE LIABILITY (OCT 1992).....	57
I190.03	PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993).....	58
I190.05	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998) .....	58
I197	EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984).....	58
I199	CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994) .....	58
I203	SUPPLEMENTAL COST PRINCIPLES (DEC 1991).....	59
I209.01	OPTION TO RENEW (SERVICES) (DESC APR 1997).....	59
I209.03	EXTENSION PROVISION (STORAGE) (DESC SEP 1991) .....	59
I211	ORDERING (OCT 1995).....	59
I225	PAYMENTS (APR 1984) .....	59
I227.01	OBLIGATION OF FUNDS (MULTIYEAR) (DESC FEB 1985) .....	60
I229	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) .....	60
I230	COST CONTRACT - NO FEE (APR 1984).....	60
I233	RIGHT OF FIRST REFUSAL OF EMPLOYMENT (NOV 1991).....	60
I237.03	NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1994) .....	60
I242	INTEGRITY OF UNIT PRICES (OCT 1997) .....	60
I251	ANTI-KICKBACK PROCEDURES (JUL 1995).....	61
I255	ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995).....	61
I257	INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1989).....	61
I400	CONTINUITY OF SERVICES (JAN 1991).....	62
I400.02	LIMITATION OF COST (APR 1984).....	62
I400.03	TERMINATION (COST-REIMBURSEMENT) (SEP 1996) .....	63
I400.05	CHANGES - COST-REIMBURSEMENT (ALT II) (APR 1984).....	64
I400.07	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984).....	65
I400.08	EXCUSABLE DELAYS (APR 1984) .....	65
I400.09	SUBCONTRACTS (ALT I) (AUG 1998).....	66
I400.10	INSURANCE - LIABILITY TO THIRD PERSONS (MAR 1996) .....	67
I400.13	ALLOWABLE COST AND PAYMENT (APR 1998).....	68
I400.14	PENALTIES FOR UNALLOWABLE COSTS (MAY 1994) .....	69
I605.01	DISCLOSURE OF INFORMATION (DESC FEB 1992).....	70

## SECTION J - LIST OF ATTACHMENTS

DD FORM 1707, INFORMATION TO OFFERORS OR QUOTERS .....	COVER SHEET
SF 33, SOLICITATION, OFFER AND AWARD .....	PAGE 1
DFSP POINT LOMA, CA (PWS, MAPS, WAGE DETERMINATION).....	ATTACHMENT 1
DFSP PUGET SOUND, WA (PWS, MAPS, WAGE DETERMINATION).....	ATTACHMENT 2
DFSP PEARL HARBOR, HI (PWS, MAPS, WAGE DETERMINATION).....	ATTACHMENT 3
LOGISTICS FUND STATEMENT .....	ATTACHMENT 4
OFFEROR SUBMISSION PACKAGE .....	ATTACHMENT 5

## SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

(THE FULL TEXT OF THESE CLAUSES IS INCLUDED IN THE OFFEROR SUBMISSION PACKAGE AT ATTACHMENT 5.)

K1.01	SMALL BUSINESS PROGRAM REPRESENTATION (FEB 1998).....	71
K1.02	TYPE OF BUSINESS ORGANIZATION (OCT 1997).....	71
K1.01-4	SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (DoD CONTRACTS) (APR 1994) .....	71
K1.01-5	PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984) (DEVIATION).....	71
K1.01-6	AFFIRMATIVE ACTION COMPLIANCE (APR 1984).....	71
K1.06	CONTRACTOR IDENTIFICATION NUMBER – DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996) .....	71
K7	COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1996) .....	71
K10.01	CLEAN AIR AND WATER CERTIFICATION (APR 1984).....	71

K15.03	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985) .....	71
K33.01	AUTHORIZED NEGOTIATORS (DESC JAN 1998).....	71
K41	WOMEN-OWNED BUSINESS (OCT 1995) .....	71
K85	DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998).....	71
K88	TAXPAYER IDENTIFICATION (JUN 1997).....	71
K94	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996).....	71
K96	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991).....	71

#### SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERS OR QUOTERS

L1	STATEMENT AS TO AWARD (SERVICES) (DESC NOV 1990) .....	72
L1.02	PROPOSAL ACCEPTANCE PERIOD (DESC NOV 1991) .....	72
L2.01	INSTRUCTIONS TO OFFERORS (RFP) (DESC OCT 1981).....	72
L2.05-8	INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALT I) (OCT 1997) .....	72
L2.11-2	FACSIMILE PROPOSALS (OCT 1997).....	74
L2.21	AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984) .....	75
L5	SERVICE OF PROTEST (AUG 1996) .....	75
L5.01	AGENCY PROTESTS (DESC AUG 1997) - DLAD .....	75
L11	POSTPONEMENT OF OPENING/CLOSING OF OFFERS (OCT 1982) DLAD.....	75
L17	AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (AUG 1998).....	76
L18	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (APR 1984) (DEVIATION) .....	76
L23	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998).....	76
L54.01	SITE VISIT (APR 1984).....	76
L74	TYPE OF CONTRACT (APR 1984) .....	76
L82	WAGE DETERMINATION (DESC JAN 1986).....	77
L87	CONDITIONS FOR MULTIYEAR OFFERS (DESC FEB 1990).....	77
L96	ADMINISTRATION OF THE SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PROGRAM CLAUSES (DESC MAY 1996).....	77
L112	NOTICE OF COST COMPARISON (NEGOTIATED) (FEB 1993) .....	77
L197.100	PREPROPOSAL CONFERENCES/SITE VISITS (DESC OCT 1998).....	78
L201.100	INSTRUCTIONS TO OFFERORS (GOCO) (DESC OCT 1998).....	78
L203	HANDCARRIED OFFERS AND EXPRESS DELIVERY SERVICE (DESC JAN 1998).....	79
L205	COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC 1991).....	79

#### SECTION M - EVALUATION FACTORS FOR AWARD

M2.03-1	SOCIOECONOMIC EVALUATION (OCT 1996) - DLAD .....	80
M43.01	EVALUATION OF OPTIONS (DESC MAR 1982) .....	80
M43.05	EVALUATION OF OPTIONS (JUL 1990) .....	80
M72	EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DESC APR 1997).....	80
M100.100	EVALUATION OF OFFERS (GOVERNMENT-OWNED/CONTRACTOR-OPERATED TERMINALS) (DESC OCT 1998) .....	81



**SECTION B - SUPPLIES/SERVICES AND PRICES/COST**

**B33.01 SERVICES TO BE FURNISHED AND PRICES (MULTIYEAR) (GOCO) (DESC JUL 1993)**

(The full text of this clause is included in the Offeror Submission Package at Attachment 5.)

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**SECTION C - DESCRIPTION/SPECIFICATIONS**

DFSP Point Loma, CA Performance Work Statement	Attachment 1
DFSP Puget Sound, WA Performance Work Statement	Attachment 2
DFSP Pearl Harbor, HI Performance Work Statement	Attachment 3

**SECTION E - INSPECTION AND ACCEPTANCE****E1.01 CONTRACTOR RESPONSIBILITY FOR GOVERNMENT INSPECTION OF SERVICES (DESC AUG 1981)**

If any inspection or test is made by the Government on the premises of the Contractor or subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. (DESC 52.246-9F04)

**E5.03 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)**

(a) **DEFINITION. Services**, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default. (FAR 52.246-4)

**E22.01 QUALITY REPRESENTATIVE (DESC JUL 1992)**

The Quality Office assigned inspection responsibility under this contract is:

**DFSPs Point Loma, CA and Puget Sound, WA**

Defense Energy Office Los Angeles  
3171 N. Gaffey Street  
San Pedro, CA 90731-1009

**DFSP Pearl Harbor, HI**

Defense Energy Office Middle Pacific  
Building 11  
Camp H. M. Smith, HI 96861

**E50 RESPONSIBILITY FOR SUPPLIES (APR 1984)**

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

**E50 (Cont'd) RESPONSIBILITY FOR SUPPLIES (APR 1984)**

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.
- (d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment. (FAR 52.246-16)

**E200 INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984)**

- (a) **DEFINITION. Services**, as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default. (FAR 52.246-5)

**SECTION F - DELIVERIES OR PERFORMANCE****F200 DELIVERY PERIOD AND PERFORMANCE REQUIREMENTS (DESC APR 1997)**

The Contractor shall operate, maintain, and protect the Government-owned bulk petroleum terminal at Defense Fuel Support Points Point Loma, CA, Puget Sound, WA, and/or Pearl Harbor, HI (as applicable) in accordance with all terms and conditions set forth herein for the period of 12:00 noon, August 1, 1999 through August 1, 2001 with one three-year option to renew.

**SECTION G - CONTRACT ADMINISTRATION DATA****G1 POSTAWARD CONFERENCE (DEC 1991)**

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5. (DFARS 252.242-7000)

**G3 INVOICE NUMBERING REQUIREMENTS (DESC DEC 1994)**

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected. For invoices submitted under the ELECTRONIC SUBMISSION OF INVOICES FOR PAYMENT clause, invoice numbers are limited to five characters.

**G3.01 PAYMENT DUE DATE (DESC OCT 1988)**

When payment due date falls on a Saturday or Sunday, or on a United States Official Federal holiday, payment will be due and payable on the following workday.

**G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC OCT 1997)**

(The full text of this clause is included in the Offeror Submission Package at Attachment 5.)

**G9.10 PAYMENT BY ELECTRONIC FUNDS TRANSFER (CCR) (JUN 1998)**

(The full text of this clause is included in the Offeror Submission Package at Attachment 5.)

**G17.01 CONTRACTOR'S ACCOUNTING SYSTEM (DESC FEB 1992)**

The Contractor shall employ and disclose, in writing, its cost accounting system and practices for this contract which shall identify and record site specific costs on a site specific basis and by contract task order. Site specific cost documentation for each contract task order must be readily retrievable and sufficiently identifiable to enable cross-referencing with payment vouchers. The foregoing is in addition to and/or complementary to other COST ACCOUNTING STANDARDS clauses contained in this contract. The Contractor shall submit the accounting system and practices with the initial offer to the Contracting Officer for approval.

**G21 DESIGNATION OF PROPERTY ADMINISTRATOR (DESC MAR 1995)**

The Property Administrator for product handled under the terms of the contract will be designated by the Commander, Defense Energy Support Center.

**G22 DESIGNATION OF THE DEFENSE ENERGY REGION (DESC JUL 1997)**

(a) The Defense Energy Region to which reference is made herein is the—

**DFSPs Point Loma, CA and Puget Sound, WA**

Defense Energy Region Americas  
2320 LaBranch, Room 1005  
Houston, TX 77004-1091

**DFSP Pearl Harbor, HI**

Defense Energy Region Pacific  
Box 64110  
Camp H. M. Smith, HI 96861-4110

(b) The Defense Energy Office to which reference is made herein is the—

**DFSPs Point Loma, CA and Puget Sound, WA**

Defense Energy Office Los Angeles  
3171 N. Gaffey Street  
San Pedro, CA 90731-1009

**DFSP Pearl Harbor, HI**

Defense Energy Office Middle Pacific  
Building 11  
Camp H. M. Smith, HI 96861

(c) The Commander of the Defense Energy Region or his designee, appointed above, is the authorized representative of the Commander, Defense Energy Support Center. (DESC 52.242-9F05)

**G148.05 SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DESC MAR 1996)**

Monthly services invoices shall be mailed directly to the Accounting and Finance Office after self-certification. All other invoices are mailed to the Contract Administration Office (CAO) after Quality Representative (QR) certification. Specific procedures follow:

(a) **MONTHLY INVOICES.** Contractors shall present invoices for monthly services (original and 3 copies) directly to the following Accounting and Finance Office within one month following the performance of the respective services:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER  
STOCK FUND DIRECTORATE  
FUELS ACCOUNTING AND PAYMENTS DIVISION  
ATTN: DFAS-CO-SFFB  
P.O. BOX 182317  
COLUMBUS, OH 43218-6250

**G148.05 (Cont'd) SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DESC MAR 1996)**

Each invoice will be certified by an official of the company in the following manner:

"I certify that the services were performed, that the amounts reflected hereon are in conformance with the contract, and that the amounts are correct and proper for payment."

Signature \_\_\_\_\_  
(PRINTED NAME AND TITLE)

**(b) ALL OTHER INVOICES.**

- (1) Contractors shall address invoices to the Accounting and Finance Office listed in (a) above.
- (2) Contractors shall certify that the invoice is true and correct and shall attach supporting documentation (e.g., subcontractor bills or invoices) for cost reimbursement invoices.
- (3) Contractors shall then present the invoice (original and 4 copies) to the cognizant QR for certification that the invoice is true and correct to the best of the QR's knowledge and that the supplies or services included on the invoice have been provided.
- (4) Last, Contractors shall submit the invoice to the applicable CAO address below for approval and for processing to the Accounting and Finance Office for payment. Upon mutual agreement between the Contractor and the QR, the QR may submit the invoice directly to the CAO after certification.

**CONUS Contract Locations**

ATTN DESC-FPA FPB ROOM 2945  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J KINGMAN RD SUITE 4950  
FORT BELVOIR VA 22060-6222

**OCONUS Contract Locations**

ATTN DESC-FPC ROOM 2945  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J KINGMAN RD SUITE 4950  
FORT BELVOIR VA 22060-6222

(c) **OVERTIME.** When the Contractor is authorized by the designated Defense Energy Region (DER) to perform services in excess of normal working hours, the Government will reimburse the Contractor as described in (1) and (2) below. Each invoice for overtime will specify the number of people working, their employment classification, number of hours worked, and the hourly rate of compensation. The written authorization from the DER must be attached to the invoice. (The authorization for overtime may be given initially by telephone, but later must be provided in writing by the DER to the Contractor.) Follow instructions given in (b) above for submission of overtime invoices.

(1) **GOCO (Government-Owned, Contractor-Operated).** The Government will reimburse actual overtime labor rate paid times actual overtime hours, plus social security taxes, insurance, and fringe benefits. No profit or G&A (general and administrative expenses) will be allowed. (Profit and G&A should be included in the monthly services charge based on the dollars estimated for the overtime line item.)

(2) **COCO (Contractor-Owned, Contractor-Operated).** The Government will reimburse at the rate specified in the SCHEDULE clause.

**SECTION H - SPECIAL CONTRACT REQUIREMENTS****H11 GUARD SERVICE (DESC MAR 1982)**

(a) In the event the Government requires guard service and/or other protective services or facilities not otherwise provided by the Contractor pursuant to the terms of this contract, the Government shall have the right--

- (1) To provide such service; or
- (2) To require the Contractor to provide such guard service; and/or
- (3) To require the Contractor to provide such other protective services or facilities.

(b) The actual cost of providing said services or facilities under (2) and/or (3) above will be for the account of the Government and will be recognized by a modification to this contract.

**H20 REPORTS OF GOVERNMENT PROPERTY (MAY 1994)**

- (a) The Contractor shall provide an annual report--
  - (1) For all DoD property for which the Contractor is accountable under the contract;
  - (2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form; and
  - (3) In duplicate, to the cognizant Government property administrator, no later than October 31.
- (b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations.  
(DFARS 252.245-7001)

**H51.03 INSURANCE REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS (DESC AUG 1998)**

(a) The General Liability Worker's Compensation and Automobile Liability Insurance to be procured and maintained by the Contractor and any subcontractors pursuant to the provisions of the INSURANCE - WORK ON A GOVERNMENT INSTALLATION clause shall provide at least the following minimum coverage:

**GENERAL LIABILITY INSURANCE.**

Bodily Injury.....AT LEAST \$ 100,000 per person  
 AT LEAST \$1,000,000 per accident  
 Property Damage.....AT LEAST \$1,000,000 per accident  
 Worker's Compensation.....AT LEAST \$100,000 except in states  
 with exclusive monopolistic funds which do not permit the writing of workmen's compensation by  
 private carriers (Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, and Wyoming).  
 (Longshore and Harbor Workers' Compensation must also be provided when applicable.)

**AUTOMOBILE LIABILITY INSURANCE.**

Bodily Injury.....AT LEAST \$200,000 per person  
 AT LEAST \$500,000 per accident  
 Property Damage.....AT LEAST \$ 20,000 per accident

(b) Prior to the commencement of work hereunder, at the request of the Contracting Officer, the Contractor shall submit the required certificates of insurance to the Contracting Officer.

**SECTION I - CONTRACT CLAUSES****II DEFINITIONS (OCT 1995)**

As used throughout this contract, the following terms shall have the meaning set forth below.

(a) **Head of the agency** (also called **agency head**) or **Secretary** means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term **authorized representative** means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) **Commercial component** means any component that is a commercial item.

(c) **Commercial item** means--

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

- (i) Has been sold, leased, or licensed to the general public; or
- (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in subparagraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirement under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in subparagraph (c)(1) or (c)(2) of this clause, but for--

- (i) Modifications of a type customarily available in the commercial marketplace; or
- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal

Government requirements. **Minor** modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of subparagraph (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

**II (Cont'd) DEFINITIONS (OCT 1995)**

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) **Component** means any item supplied to the Federal Government as part of an end item or of another component.

(e) **Nondevelopmental item** means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in subparagraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of subparagraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) **Contracting Officer** means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term **subcontracts** includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract. (FAR 52.202-1)

**II.01-4 DEFINITIONS (CONT'D) (STORAGE) (DESC JAN 1996)**

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) **Quality Representative (QR)** includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR).

(1) The QAR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services.

(2) The QSR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing services.

(b) **Petroleum storage facilities** shall include --

(1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum products into and out of such tanks;

(2) Fencing, flood lighting, dikes or fire walls, suitable fire fighting plan and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and

(3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.

(c) The terms **isolated system** and **segregated system** mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed-type valves, etc.

(d) **Dedicated system** means a self contained, single product system with no pipeline connections to any other system in the facility.

(e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

(f) **Shell capacity** means the gross volumetric capacity of the storage tank as determined from tank calibration.

(g) **Fill capacity** means the capacity of the storage tank when filled to the maximum fill level, i.e., the highest point to which a petroleum storage tank may be filled with product, allowing for product expansion and other safety considerations.

(h) **Product** or **products** means the Government-owned petroleum product(s) within one of the following categories which the Schedule indicates the Contractor is to receive, store, handle, and ship under this contract:

(1) Crude oil shall include any unrefined petroleum in its natural state;

(2) Light fuels includes any grade of the following distillate fuel types: aircraft engine fuels, motor gasoline, naphtha and like solvents, kerosene, diesel fuels and numbers 1 and 2 heating fuels;

(3) Heavy fuels includes number 4 heating fuel and all residual type fuels;

(4) Lubricating oil includes all grades of such product utilized in aircraft, automotive, diesel, and marine engines;

(5) Packaged products means all products packaged in containers of 55-gallon capacity or less.

(i) **Unit of quantity** means--

(1) The U.S. gallon of 231 cubic inches;

(2) The barrel of 42 U.S. gallons;

(3) The long ton of 2240 pounds; and

(4) The pound of 16 ounces, depending upon the unit shown in the Schedule.

(j) **Description of services to be performed** as stated in the CHANGES - FIXED PRICE clause is defined to include, but is not limited to, the following:

(1) The grade or type of product by specification;

(2) The regular working hours set forth in the schedule;

**11.01-4 (Cont'd) DEFINITIONS (CONT'D) (STORAGE) (DESC JAN 1996)**

- (3) The method of receiving or shipping.
- (4) The specifications of Contractor-furnished equipment,
- (5) The provisions of the General Delivery Conditions as amended;
- (6) The number of the Contractor-furnished units (equipment);
- (7) The response time;
- (8) The estimated truck movement; and
- (9) The MERT hours.

(k) **Equipment or delivery and servicing equipment** as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.

(l) **Fuel and Oil** used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil, and jet engine oil.

(m) **Response time** is defined as that interval of time between the time a call is placed on the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.

(n) For purposes of this contract, the term **truck movement** as set forth above is defined to be any of the following:

(1) The movement of a refueler, defueler, or oiler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."

(2) The movement of a combination refueler/oiler which services an aircraft with both products. Such movement shall be considered a 1 1/2 "truck movement."

(3) The movement of a combination refueler/oiler which services an aircraft with oil only. Such movement shall be considered one "truck movement."

(4) Servicing of group support equipment, small tanks, and/or other units as designated by the Commanding Officer, with either jet fuel or AVGAS, shall count as truck movements if dispatched separately. Each such servicing, if performed in multiples or in conjunction with aircraft fuel delivery, shall be counted as a 1/5 "truck movement" with the exception of the first which will count as one "truck movement."

(5) The movement of a refueler, defueler, or oiler as the result of a service call which is not completed, due to no fault of the Contractor.

(6) The movement of a refueler, defueler, or oiler to a tank farm for purposes of refilling or discharging product as applicable. With regard to refueler refilling, only those refills totaling 1,000 gallons or more per vehicle shall be considered a truck movement. The Commanding Officer may, at his discretion, exercise control and supervision over the refilling/discharging operation.

(DESC 52.202-9F08)

**11.02 COMPUTER GENERATED FORMS (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, PROVIDED there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form Number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form PROVIDED there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different from the required form, then the rights and obligations of the parties will be determined based on the content of the required form. (FAR 52.253-1)

**11.06 CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (JUL 1997)**

(a) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Official's Name)

\_\_\_\_\_  
(Title)



**11.06 (Cont'd) CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (JUL 1997)**

- (b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including—
  - (1) Cost or pricing data if required in accordance with FAR 15.804-2; and
  - (2) Actual cost data and data to support any estimated costs, even if cost or pricing data are not required.
- (c) The certification requirement in paragraph (a) of this clause does not apply to—
  - (1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
  - (2) Final adjustments under an incentive provision of the contract.
- (d) The amount requested shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations. (DFARS 252.243-7002)

**11.07 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998)**

(The full text of this clause is included in the Offeror Submission Package at Attachment 5.)

**11.19 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any DOD FAR Supplement Regulation (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation. (FAR 52.252-6)

**11.20 CLAUSES INCORPORATED BY REFERENCE (FEB 1988)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

<http://www-far.npr.gov/>

(FAR 52.252-2)

**11.22 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed-price-type contract or contract modification and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee, determines that there was a violation of subsection 27(a), **(b)**, **or (c)** of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in Section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
  - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
  - (3) For cost-plus-award-fee contracts--
    - (i) The base fee established in the contract at the time of contract award;
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  - (4) For fixed-price-incentive contracts, the Government may--
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
    - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
  - (5) For firm-fixed-price contracts, 10 percent of the initial contract price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

**II.22 (Cont'd) PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract. (FAR 52.203-10)

**II.22-1 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract. (FAR 52.203-8)

**II.24 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)****(a) DEFINITIONS.**

**Agency**, as used in this clause, means executive agency as defined in 2.101.

**Covered Federal action**, as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**Indian tribe and tribal organization**, as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

**Influencing or attempting to influence**, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

**Local government**, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

**Officer or employee of an agency**, as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

**Person**, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

**Reasonable compensation**, as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

**Reasonable payment**, as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

**11.24 (Cont'd) LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

**Recipient**, as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

**Regularly employed**, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

**State**, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

**(b) PROHIBITIONS.**

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

**(i) AGENCY AND LEGISLATIVE LIAISON BY OWN EMPLOYEES.**

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(a) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(a) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(b) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(c) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

**(ii) PROFESSIONAL AND TECHNICAL SERVICES.**

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(a) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(b) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional

**11.24 (Cont'd) LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

(such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(a) and (b) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

**(iii) DISCLOSURE.**

(A) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payments using nonappropriated funds (to INCLUDE profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subdivision (A) of this clause. An event that materially affects the accuracy of the information reported includes--

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(c) A change in the officer(s), employee(s), or Members(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) **AGREEMENT.** The Contractor agrees not to make any payment prohibited by this clause.

**(v) PENALTIES.**

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) **COST ALLOWABILITY.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(FAR 52.203-12)

**11.26 REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG 1992)**

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend further payments to the Contractor upon a written determination by the agency head that substantial evidence exists that the Contractor's request for advance, partial, or progress payments is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government in accordance with 10 U.S.C. 2307(e) shall not constitute an excusable delay under the DEFAULT clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract. (DFARS 252.232-7006)

**12 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(DFARS 252.204-7003)

**12.06 CHANGES - FIXED-PRICE (ALT II) (APR 1984)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed. (FAR 52.243-1/Alt II)

**13 EXTRAS (APR 1984)**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer. (FAR 52.232-11)

**13.01 PROMPT PAYMENT (JUN 1997)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in Section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

**(a) INVOICE PAYMENTS.****(1) DUE DATE.**

(i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

**(2) CERTAIN FOOD PRODUCTS AND OTHER PAYMENTS.**

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities, and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but no later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in Section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

**13.01 (Cont'd) PROMPT PAYMENT (JUN 1997)**

(D) For dairy products, as defined in Section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) **CONTRACTOR'S INVOICE.** The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils) with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(4) **INTEREST PENALTY.** An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) **COMPUTING PENALTY AMOUNT.** The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however,

**13.01 (Cont'd) PROMPT PAYMENT (JUN 1997)**

compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) **PROMPT PAYMENT DISCOUNTS.** An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) **ADDITIONAL INTEREST PENALTY.**

(i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1.00 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(a) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(b) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(c) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(a) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(b) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except--

(a) The additional penalty shall not exceed \$5,000;

(b) The additional penalty shall never be less than \$25; and

(c) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.00.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based on individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) **CONTRACT FINANCING PAYMENTS.**

(1) **Due Dates For Recurring Financing Payments.** If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

**I3.01 (Cont'd) PROMPT PAYMENT (JUN 1997)**

(2) Due Dates For Other Contract Financing. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest Penalty Not Applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) **FAST PAYMENT PROCEDURE DUE DATES.** If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice. (FAR 52.232-25)

**I4 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)**

(a) Discounts for prompt payments will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made. (FAR 52.232-8)

**I7 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printing and writing paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products. (FAR 52.204-4)

**I8.02 ASSIGNMENT OF CLAIMS (ALT I) (APR 1984)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing. (FAR 52.232-23/Alt I)

**II1.03 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)**

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts



**II1.03 (Cont'd) DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)**

of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the DISPUTES clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.249-8)

**II1.04 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract. (FAR 52.242-13)

**II2.01 DISPUTES (OCT 1995)**

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) **Claim**, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim--

(A) Exceeding \$50,000; or

(B) Regardless of the amount claimed, when using--

(a) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(b) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

**I12.01 (Cont'd) DISPUTES (OCT 1995)**

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. (FAR 52.233-1)

**I12.03 PROTEST AFTER AWARD (AUG 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) *or* 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government. (FAR 52.233-3)

**I15.03 CONVICT LABOR (AUG 1996)**

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment that has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa,

**I15.03 (Cont'd) CONVICT LABOR (AUG 1996)**

the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) Such paid employment will not result in the displacement of employed workers, nor be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, nor impair existing contracts for services; and
- (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943. (FAR 52.222-3)

**I16.01 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995)**

(a) **OVERTIME REQUIREMENTS.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.** In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.** The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) **PAYROLLS AND BASIC RECORDS.**

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) **SUBCONTRACTS.** The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause. (FAR 52.222-4)

**I18 SPECIAL PROHIBITION ON EMPLOYMENT (JUN 1997)**

(a) **DEFINITIONS.**

As used in this clause--

- (1) **Arising out of a contract with the DoD** means any act in connection with--
  - (i) Attempting to obtain;
  - (ii) Obtaining; or

**II8 (Cont'd) SPECIAL PROHIBITION ON EMPLOYMENT (JUN 1997)**

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) **Conviction of fraud or any other felony** means any conviction for fraud or a felony in violation of state or Federal criminal statutes whether entered on a verdict or plea, including a plea of no lo contendere, for which sentence has been imposed.

(3) **Date of Conviction** means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after 29 September 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from--

- (1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;
- (2) Serving on the board of directors of any DoD Contractor or first-tier subcontractor; or
- (3) Serving on as a consultant to any DoD Contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
- (2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone (202) 616-3507. (DFARS 252.203-7001)

*The following clause applies to the DFSP Pearl Harbor, HI location only.*

**II8.01 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (DEC 1991)**

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of Hawaii, individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract. (DFARS 252.222-7000)

**II8.03 EQUAL OPPORTUNITY (APR 1984) (DEVIATION)**

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. [NOTE: It shall not be a violation of E.O. 11246 for a Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. See 22.807(b)(4).]

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;

**I18.03 (Cont'd) EQUAL OPPORTUNITY (APR 1984) (DEVIATION)**

- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisement(s) for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall, within 30 days following the award, file Standard Form 100 (EEO-1), or any successor form, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its premises by the Contracting Officer or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of conducting on-site compliance reviews and inspecting such books, records, accounts and other materials as may be relevant to an investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; *in* the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; **PROVIDED**, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1. (FAR 52.222-26)

**I18.06 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)**

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

(b) DoD Hotline posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(DFARS 252.203-7002)

**I20 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) (1) **Bona fide agency**, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

**I20 (Cont'd) COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(2) **Bona fide employee**, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) **Contingent fee**, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) **Improper influence**, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter. (FAR 52.203-5)

**I24 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer. (FAR 52.222-1)

**I25 AUTHORIZATION AND CONSENT (JUL 1995)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent. (FAR 52.227-1)

**I27 GRATUITIES (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (FAR 52.203-3)

**I28.16 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)**

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

**I28.16 (Cont'd) FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)**

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption. (FAR 52.229-3)

**I32 CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)**

- (a) **Cancellation**, as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.
- (b) Except for cancellation under this clause or termination under the DEFAULT clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.
- (c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.
- (d) The cancellation charge will cover only (1) costs (i) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.
- (e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause of this contract. The Contractor shall submit the claim promptly but no later than one year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.
- (f) The Contractor's claim may include--
  - (1) Reasonable nonrecurring costs (see FAR Subpart 15.4) that are applicable to and normally would have been amortized in all supplies or services that are multiyear requirements;
  - (2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;
  - (3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and
  - (4) Costs not amortized by the unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.
- (g) The claim shall not include--
  - (1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;
  - (2) Any cost already paid to the Contractor;
  - (3) Anticipated profit or unearned fee on the canceled work; or
  - (4) For service contracts, the remaining useful commercial life of facilities. Useful commercial life means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.
- (h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

**I32 (Cont'd) CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)**

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges. (FAR 52.217-2)

**I33 INTEREST (JUN 1996)**

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract. (FAR 52.232-17)

**I36 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an



**I36 (Cont'd) TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l) respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

**I36 (Cont'd) TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. (FAR 52.249-2)

**I43.01 LIMITATION OF LIABILITY - SERVICES (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract. (FAR 52.246-25)

**I90 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)**

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder. (FAR 52.225-11)

**I94.01 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997)**

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

**194.01 (Cont'd) PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997)**

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent. (FAR 52.215-11)

**195 AUDIT AND RECORDS -- NEGOTIATION (AUG 1996)**

(a) As used in this clause, **records** includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) **EXAMINATION OF COSTS.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hours, or price-redeterminable contract, or any combination of these, the Contractor shall maintain, and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performance of this contract.

(c) **COST OR PRICING DATA.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) **COMPTROLLER GENERAL.**

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) **REPORTS.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer, or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

**I95 (Cont'd) AUDIT AND RECORDS -- NEGOTIATION (AUG 1996)**

(f) **AVAILABILITY.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract. (FAR 52.215-2)

**I96.02 PRICING ADJUSTMENTS (DEC 1991)**

The term **pricing adjustment**, as used in paragraph (a) of the PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS, SUBCONTRACTOR COST OR PRICING DATA, and SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS clauses means the aggregate increases and/or decreases in cost plus applicable profits. (DFARS 252.215-7000)

**I97.02 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997)**

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(FAR 52.215-13)

**I98 PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

# **198 (Cont'd) PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment. (FAR 52.209-6)

## **1100 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

### **(a) DEFINITIONS.**

(1) **Act**, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

(2) **Contractor**, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(3) **Service employee**, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as the terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) **APPLICABILITY.** This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

### **(c) COMPENSATION.**

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid in the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classification based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

**1100 (Cont'd) SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) **OBLIGATION TO FURNISH FRINGE BENEFITS.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) **MINIMUM WAGE.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) **SUCCESSOR CONTRACTS.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wage and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligations unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contractor was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) **NOTIFICATION TO EMPLOYEES.** The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) **SAFE AND SANITARY WORKING COMDITIONS.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) **RECORDS.**

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

- (i) For each employee subject to the Act--
  - (A) Name and address and social security number;
  - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
  - (C) Daily and weekly hours worked by each employee; and
  - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

**II00 (Cont'd) SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) **PAY PERIODS.** The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(k) **WITHHOLDING OF PAYMENTS AND TERMINATION OF CONTRACT.** The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) **SUBCONTRACTS.** The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) **COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO SERVICE EMPLOYEES.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) **SENIORITY LIST.** Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) **RULINGS AND INTERPRETATIONS.** Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) **CONTRACTOR'S CERTIFICATION.**

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statement is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) **VARIATIONS, TOLERANCES, AND EXEMPTIONS INVOLVING EMPLOYMENT.** Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest to avoid serious impairment of the conduct of Government business.

**I100 (Cont'd) SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment and apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or **I100** supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) **APPRENTICES.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) **TIPS.** An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(n) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) **DISPUTES CONCERNING LABOR STANDARDS.** The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives. (FAR 52.222-41)

**I102 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;



**1102 (Cont'd) FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)**

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under the contract. (FAR 52.222-43)

**1102.01 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with--

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. (FAR 52.222-44)

**1102.02 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DESC JUL 1988)**

(a) The Contractor warrants that the prices set forth in this contract do not include any contingency allowance for increased costs for which adjustment is provided by this clause.

(b) When payroll taxes that are applicable to this contract by law (i.e., Workmen's Compensation, Federal Unemployment Insurance (FUI), State Unemployment Insurance (SUI), and Federal Insurance Compensation (FICA) rates) are revised or imposed after award, increasing or decreasing the Contractor's costs under this contract, the contract price or contract unit price will be adjusted to reflect the changes. This adjustment shall be limited to increases or decreases in payroll taxes and shall not include any amount for general and administrative cost, overhead, or profit.

(c) The Contractor shall notify the Contracting Officer of any increases or decreases claimed under this clause within 30 days after the effective date of the change in payroll taxes, unless this period is extended by the Contracting Officer in writing. In the case of any decrease in payroll taxes, if a Contractor fails to promptly notify the Contracting Officer, the Government retains the right to submit a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof that may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price shall be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the Contractor shall continue performance.

**I102.02 (Cont'd) FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DESC JUL 1988)**

(d) The Contracting Officer or his authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. (DESC 52.222-9F01)

**I102.03 DRUG-FREE WORK FORCE (SEP 1988)****(a) DEFINITIONS.**

(1) **Employee in a sensitive position**, as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) **Illegal drugs**, as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objective of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risk to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session. (DFARS 252.223-7004)

**I102.04 DRUG-FREE WORKPLACE (JAN 1997)****(a) DEFINITIONS.** As used in this clause--

(1) **Controlled substance** means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

(2) **Conviction** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

(3) **Criminal drug statute** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

(4) **Drug-free workplace** means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) **Employee** means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

(6) **Individual** means an offeror/contractor that has no more than one employee including the offeror/contractor.

**I102.04 (Cont'd) DRUG-FREE WORKPLACE (JAN 1997)**

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration); or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;**I102.04**

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.  
(FAR 52.223-6)

**I114 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)****(a) GOVERNMENT-FURNISHED PROPERTY.**

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

**(b) CHANGES IN GOVERNMENT-FURNISHED PROPERTY.**

(1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

**II14 (Cont'd) GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)**

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

**(c) TITLE IN GOVERNMENT PROPERTY.**

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

- (A) Issuance of the material for use in contract performance;
- (B) Commencement of processing of the material or its use in contract performance; or
- (C) Reimbursement of the cost of the material by the Government, whichever occurs first.

**(d) USE OF GOVERNMENT PROPERTY.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

**(e) PROPERTY ADMINISTRATION.**

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

**(f) ACCESS.** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

**(g) LIMITED RISK OF LOSS.** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

**(h) EQUITABLE ADJUSTMENT.** When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

**(i) FINAL ACCOUNTING AND DISPOSITION OF GOVERNMENT PROPERTY.** Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

**II14 (Cont'd) GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)**

(j) **ABANDONMENT AND RESTORATION OF CONTRACTOR'S PREMISES.** Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) **COMMUNICATIONS.** All communications under this clause shall be in writing.

(l) **OVERSEAS CONTRACTS.** If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively. (FAR 52.245-2)

**II16 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DESC APR 1997)**

(a) Government-owned petroleum products received, stored, and transported under this contract are governed by the provisions of this clause.

(b) Title to any Government-owned petroleum products in the possession of or under the custody of the Contractor by reason of this contract, which is hereinafter referred to in this clause as "such property," shall at all times remain in the Government, and such property shall be used only for the purposes set forth in this contract. The Government shall at all times have access to the premises wherein any such property is located.

(c) The Contractor shall protect and preserve such property in a manner consistent with sound industrial practice.

(d) At the end of the contract period the Government may abandon any Government-owned petroleum products in place, at which time all obligations of the Government regarding such abandoned petroleum products shall cease. The contract price shall be reduced to reflect the fair market value of any abandoned petroleum products. If an agreement as to compensation for abandoned petroleum products cannot be reached in a timely manner, the Contracting Officer will make a formal determination. The decision will be subject to resolution in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(e) The Contractor shall not be liable for loss of or damage to all such property while in the possession of or under the custody of the Contractor by reason of this contract, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto)--

(1) Which results from negligence, or bad faith, or willful misconduct of the Contractor, its employees, or agents; or

(2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(f) Except for those risks assumed by the Contractor pursuant to subparagraph (e)(1) of this clause, the Contractor represents and warrants that the prices stated in the Schedule do not include the cost of insurance covering risk or loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, nor any provision for a reserve to cover such risk. In the event the Contractor is reimbursed or compensated for any loss or damage to such property, it shall reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. (DESC 52.245-9F04)

**II17 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price. (FAR 52.237-2)

**II19.04 PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997)**

(a) **INTRODUCTION.**

(1) The Contractor shall prepare all documentation in accordance with the information and instructions provided herein. Documents and procedures are subject to change. The Defense Energy Region (DER) shall notify the Contractor at least 45 days prior to implementation of any change. The Contractor shall maintain property control records of Government-owned product in its possession or in its custody as provided herein. Such property control records shall be subject to audit by the U.S. Government.

(2) The Contractor shall provide the required transaction data shown under paragraph (b)(3) below.

**II19.04 (Cont'd) PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997)****(b) DEFENSE FUEL AUTOMATED MANAGEMENT SYSTEM (DFAMS) REPORTING REQUIREMENTS.**

(1) The Contractor shall prepare all necessary documentation for each transaction affecting the inventory of Government-owned products in its possession by virtue of this contract. The Contractor shall transmit one copy of each document prepared to the appropriate DER or Inventory Control Point (ICP) on a daily basis as prescribed by the DER. A transaction sequence number will be shown in ink in the upper right hand corner of the document. The DER or ICP may also telephone the Contractor on a daily basis (Monday through Friday, except holidays) to obtain information concerning transactions processed. The Contractor shall prepare and report each transaction in accordance with guidance provided in DoD 4140.25-M, Volume V, Appendices A, B, and C, as appropriate (copies of the publication will be provided by the Contracting Officer upon request). The cognizant DER or ICP shall advise the Contractor of any changes in processing and reporting procedures.

(2) The Contractor shall prepare and report weekly and monthly (see DoD 4140.25-M, Volume II, Chapter 10, Sections C and K) inventories of Government-owned product in its possession. By the second work day of each month, the Contractor shall furnish the DER by facsimile the physical inventory quantity for each product stored at the facility to be followed up by a hard copy document (DD Form 1348-8) by the fifth of the month.

(3) Under the DFAMS, all transactions are recorded by Document Identifier Code (DIC). The most commonly used codes are explained below. The DER shall provide instructions for any transaction that may be processed but not shown below.

<u>DIC</u>	<u>TRANSACTION</u>	<u>DOCUMENT</u>
<u><b>SHIPMENTS</b></u>		
P21	Shipments from a DFSP to a Service/Agency	DD Form 250-1 DD Form 1348-7
P22	Shipments between DFSPs	DD Form 250-1 DD Form 1348-7
<u><b>RECEIPTS</b></u>		
P30	Receipts from a DESC Procurement Contract	DD Form 250/250-1
P31	Service/Agency Receipts from a DFSP	DD Form 250-1 DD Form 1348-7
P32	Receipts from a DFSP (receipts associated with P22 transactions)	DD Form 250-1 DD Form 1348-7
P39	Receipts from an end-user (with or without credit)	DD Form 250-1 DD Form 1348-7
<u><b>INVENTORY</b></u>		
P41	Physical Inventory	DD Form 1348-8
P42	Inventory Adjustments <ul style="list-style-type: none"> <li>o Normal handling of variances (excessive)</li> <li>o Determinable losses such as spills, line breaks, nonrecoverable tank bottoms, major disasters, combat losses, etc.</li> </ul>	DD Form 1348-8
P43	Condition/Identity Change <ul style="list-style-type: none"> <li>o Downgrade, regrade, or additive</li> </ul>	DD Form 1348-8

**II19.04 (Cont'd) PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997)**

(4) **The Contractor shall prepare inventory adjustment documents (DD Form 1348-8/P42 transactions) when inventory variances (discrepancies) exceed tolerance factors; determinable losses occur such as contaminated fuels, spills, pipeline ruptures, explosions or loss of product samples (five gallons or more) shipped to laboratories. An explanation shall be provided on each inventory adjustment document explaining gain or loss in excess of tolerance.** Each document shall be signed and dated by the Contractor's representative and the Quality Surveillance Representative (QSR). The QSR shall indicate whether he/she concurs or nonconcurs with the statement and shall provide an explanation for any nonoccurrence.

(5) At the end of each month (every six months for static storage), the cognizant DER or ICP shall forward one copy of the Inventory Reconciliation Document Register which lists all transactions processed during the period. The register will contain the following statement and shall be signed and dated by an authorized representative of the Contractor and the Government:

"I certify that the transactions recorded in this document register are complete and accurate. They represent all actions affecting this account during the month (past six months for static storage) in the sequence shown. Each transaction, except a final automatic reconciliation adjustment, is supported by a valid auditable source document."

(6) Within five days after receipt of the Inventory Reconciliation Document Register, the Contractor shall advise the cognizant DER or ICP in writing of any discrepancy and provide a detailed explanation of any gain or loss (P42) transaction in excess of tolerance. Further, the Contractor shall attach all supporting documents to the inventory document register and retain the entire package on file for future audits.

**(c) OTHER REQUIREMENTS.**

(1) **STORAGE TANK OUT OF SERVICE.** Prior to removing a storage tank from service, the Contractor shall immediately notify the Property Administrator by telephone, with follow-up confirmation in writing, providing the date and time the tank is scheduled to be removed from service. In addition, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(2) **UNRECOVERABLE TANK BOTTOMS.** Prior to the end of the contract period, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(3) **REPORTING FUEL ADDITIVES AND SLOP FUEL.** Government-owned fuel additives and slop fuel stock at the DFSP will be treated as separate and distinct items, and all transactions shall be documented as outlined herein. These products will be recorded in gallons and reported under the approved National Stock Number (NSN).

(a) An auditable identity change document (DD Form 1348-8) shall be used to account for bulk FSII blended with bulk fuel and fuel downgraded to slop. Fractions of a gallon cannot be used (e.g., if 1.5 gallons of FSII were injected, report 1 gallon and record the .5 until a whole gallon is used).

(b) Packaged additives such as COR, ASA, AS1, AD1, and CO1 shall be accounted for locally using a general log or ledger. As the additive is injected, record the amount in the log to track usage and inventory. No other documentation is required.

(4) **GOVERNMENT BILLS OF LADING (GBLs) - CONUS ONLY.** Storage Contractors shall prepare GBLs in accordance with the data and instructions provided in DESCH 4500.4, Transportation and Traffic Management -Preparation of Government Bills of Lading for Shipment of DEFENSE ENERGY SUPPORT CENTER Fuels (copies of the publication will be provided by the Contracting Officer upon request). The cognizant DER shall advise Contractors of any changes in processing and reporting procedures. Contractors shall contact the cognizant DER when additional guidance is required.

(5) **STATEMENT OF AUTHORIZED SIGNATURES.** The Contractor shall furnish the Property Administrator a statement containing the names and handwritten signatures of persons authorized by the Contractor to receive and accept Government-owned product or property.

(6) **RETENTION OF SUPPORTING DOCUMENTS.** The Contractor shall retain one copy of the ordering activities' requisitions for a period of two years or until the expiration of this contract, whichever is sooner.

(7) **CHANGE IN DFSP OPERATOR.** Transfer of residual inventory from expired contracts will be made regardless of whether there is a change in Contractors. The transfer of DFSP product will be accomplished as follows:

(i) The outgoing Contractor, the new Contractor, and the QSR will jointly gauge all tanks and will calculate the physical inventory.

(ii) Upon completion of the inventory, a DD Form 1348-8 will be completed for each grade of fuel.

(iii) The following certification will be typed on each DD Form 1348-8 and signed by the appropriate individuals:

"The inventory recorded on this DD Form 1348-8 has been transferred from contract  
(old number) to contract (new number) on (date) .

Signature (Outgoing Contractor) / (New Contractor) "

(iv) The Contractor shall telephone this information into the DER and mail one copy of each DD Form 1348-8 to the DER.

**II19.04 (Cont'd) PROPERTY CONTROL RECORDS (DOMESTIC) (DESC JUL 1997)**

(v) The DER or ICP shall mail three copies of the Inventory Reconciliation Document Register covering the transfer month to the outgoing Contractor. The outgoing Contractor shall apply appropriate certification to the Inventory Reconciliation Document Register and shall retain one copy, provide one copy to the new Contractor, and return the third copy to the DER.

(8) **RETENTION OF ACCOUNTABLE RECORDS AND DOCUMENTS.** All records and documents identified above are DESC-accountable records and must be retained for two years after expiration of the contract. (DESC 52.245-9F02)

**II21 CUSTODY OF PETROLEUM PRODUCT (DESC APR 1968)**

(a) Custody of petroleum products and risk of loss thereof shall pass to the Contractor as follows:

(1) **PIPELINE RECEIPTS.** When the product passes the flange connecting the carrier's pipeline and the Government-furnished Contractor-operated pipeline.

(2) **MARINE RECEIPTS.** When the product passes the permanent hose connections of the barge or tanker unloading the product.

(3) **TANK CAR RECEIPTS.** When the tank car comes to rest on the Government-furnished Contractor-operated siding.

(4) **TRANSPORT TRUCK RECEIPTS.** When the product passes from the transport truck discharge hoses into the Government-furnished Contractor-operated receiving facilities whether it be a storage tank, line, or any other type of receiving equipment.

(b) Custody of petroleum products and risk of loss thereof shall pass from the Contractor as follows:

(1) **PIPELINE SHIPMENTS.** When the product passes the flange connecting the Government-furnished Contractor-operated pipeline and the carrier's pipeline.

(2) **MARINE SHIPMENTS.** When the product passes the permanent hose connections of the barge or tanker.

(3) **TANK CAR SHIPMENTS.** When the loaded tank car is picked up by the carrier.

(4) **TRANSPORT TRUCK SHIPMENTS.** When the loaded transport truck is released for shipment by the Contractor.

(DESC 52.212-9F03)

**II22 USE OF FACILITIES (DESC APR 1984)**

(a) The Contractor shall not use the facilities (defined in FAR Part 45) for any purpose other than that required for the performance of this contract.

(b) The Contractor shall not be required to pay rental for the use of the facilities for the performance of this contract. The Contractor shall not include any amount on account of rental of the facilities as an element of price or cost under this contract. The Contractor further agrees and represents that in no event will it include any amount or allowance for amortization, depreciation, or obsolescence of the facilities as an element of cost or price under any contract with the Government or any subcontract thereunder.

(c) The Government shall not be liable to the Contractor for damage or loss of profit by reason of nondelivery or of any delay in the delivery of any of the facilities. In any such case, the Contracting Officer shall equitably adjust the performance dates or contract price, or both, and any other contract provisions affected by the nondelivery or delay in accordance with the procedures provided for in the CHANGES clause of this contract. (DESC 52.245-9F07)

**II23 TITLE TO FACILITIES (DESC JUL 1991)**

(a) Title to the facilities, including any additions or replacements thereto, furnished by the Government shall at all times remain with the Government.

(b) Title to all repairs, replacement parts, or accessories furnished and affixed to the facilities by the Contractor in performing maintenance hereunder shall vest in the Government. (DESC 52.245-9F06)

**II24 LIABILITY FOR THE FACILITIES (JAN 1997) (DEVIATION)**

(a) The term "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which the facilities are installed or located; or

(3) A separate and complete major industrial operation in connection with which the facilities are used.

(b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities, or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

(c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage--



**II24 (Cont'd) LIABILITY FOR THE FACILITIES (JAN 1997) (DEVIATION)**

- (1) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
- (2) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (3) For which the Contractor is otherwise responsible under the express terms of this contract;
- (4) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
- (5) That results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel--

- (i) To establish, maintain, and administer a system for control of the facilities in accordance with the "Property administration" paragraph of the Government Property clause; or

- (ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with the "Property administration" paragraph of the Government Property clause, or to take reasonable steps to comply with any appropriate written direction that the Contracting Officer may prescribe as reasonably necessary for the protection of the facilities. If the Government Property clause does not include the "Property administration" paragraph, then the Contractor shall exercise sound industrial practice in complying with the requirements of this subdivision (c)(5)(ii).

- (d) (1) If the Contractor fails to act as provided by subparagraph (c)(5) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

- (2) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

- (i) Did not result from the Contractor's failure to maintain an approved program or system; or
  - (ii) Occurred while an approved program or system was maintained by the Contractor.

- (e) If the Contractor transfers facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the facilities. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

- (f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer documentation of insurance or an authenticated copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer."

- (g) When there is any loss or destruction of, or damage to, the facilities, with the exception of low value property for which the loss, damage, or destruction is required to be reported at contract termination, completion, or when needed for continued contract performance--

- (1) The Contractor shall promptly notify the Contracting Officer and, with the assistance of the Contracting Officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within 30 days) a statement of--

- (i) The facilities lost or damaged;
  - (ii) The time and origin of the loss or damage;
  - (iii) All known interests in commingled property of which the facilities are a part; and
  - (iv) Any insurance covering any part of or interest in such commingled property;

- (2) The Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged facilities, or take such other action as the Contracting Officer may direct in writing; and

- (3) The Contractor shall perform its obligations under this paragraph (g) at Government expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss in compensated by insurance.

**I124 (Cont'd) LIABILITY FOR THE FACILITIES (JAN 1997) (DEVIATION)**

(h) The Government is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If the Government does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition of the related contracts affected shall be governed by the terms and conditions of those contracts.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to the Government or otherwise disposed of under the terms of this contract (1) in as good condition as when received by the Contractor, (2) improved, or (3) as required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by the Contracting Officer, shall--

- (1) Use the proceeds to repair, renovate, or replace the facilities involved; or
- (2) Pay such proceeds to the Government.

(k) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. (FAR 52.245-8)

**I126 INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1. (FAR 52.251-2)

**I129 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)**

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia. (FAR 52.236-14)

**I131 INSURANCE - WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request. (FAR 52.228-5)

**I132.02 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(FAR 52.215-8)

**I136 COMPETITION IN SUBCONTRACTING (DEC 1996)**

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Public Law 101-510, section 831, as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(FAR 52.244-5)

**I168 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

(a) **DEFINITIONS.** As used in this clause--

**All employment openings** includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

**Appropriate office of the State employment service system** means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

**Positions that will be filled from within the Contractor's organization** means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

**Veteran of the Vietnam era** means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) **GENERAL.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) **LISTING OPENINGS.**

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) **APPLICABILITY.** This clause does not apply to the listing of employment openings that occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

**I168 (Cont'd) AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)****(e) POSTINGS.**

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

**(f) NONCOMPLIANCE.**

If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

**(g) SUBCONTRACTS.**

The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(FAR 52.222-35)

**I169 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date (1) as of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) **SUBCONTRACTS.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(FAR 52.222-37)

**I170 UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS (JUN 1997)**

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

**I170 (Cont'd) UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS (JUN 1997)**

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term **small business concern** shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily **I170** business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term **small business concern owned and controlled by women** shall mean a small business concern (1) that is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.  
(FAR 52.219-8)

**I171 SMALL, SMALL DISADVANTAGED , AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)**

(a) This clause does not apply to small business concerns.

(b) **DEFINITIONS.** As used in this clause—

(1) **Commercial item** means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

(2) **Commercial plan** means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

(3) **Individual contract plan** means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

(4) **Master plan** means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

(5) **Subcontract** means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, with small disadvantaged business concerns, and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of --

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

**H171 (Cont'd) SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)**

- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
- (iv) Total dollars planned to be subcontracted to women-owned small business concerns
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small, small disadvantaged, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause in this contract entitled UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will—
  - (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and
  - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
  - (i) Source lists, e.g., PASS guides, and other data that identify small, small disadvantaged, or women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged, or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged, and women-owned small business sources.
  - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
  - (1) Assist small, small disadvantaged, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small, small disadvantaged, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

## **II71 (Cont'd) SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)**

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties for misrepresentation of business status as small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, (1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS, or (2) an approved plan required by this clause, shall be a material breach of the contract. (FAR 52.219-9)

### **II71.01-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996)**

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at FAR 52.219-9, SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) **DEFINITIONS.** As used in this clause—

**Indian** means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any **Native** as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

**Indian organization** means the governing body of any Indian tribe or entity established or recognized by the governing body for the purposes of 25 U.S.C., Chapter 17.

**Indian-owned economic enterprise** means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

**Indian tribe** means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

**Interested party** means a prime Contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the self-certification of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), ATTN: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract;
- (ii) The target cost of a cost-plus-incentive-fee prime contract;

## **I171.01-1 (Cont'd) UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996)**

(iii) The target cost and ceiling price of a fixed-price incentive prime contract; or

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the DISPUTES clause of this contract. (FAR 52.226-1)

## **I171.03 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 1996)**

This clause supplements the Federal Acquisition Regulation 52.219-9, SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN clause of this contract.

### **(a) DEFINITIONS.**

(1) **Historically black colleges and universities**, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

(2) **Minority institutions**, as used in this clause, means institutions meeting the requirements of Section 31046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when--

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation; and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who Are Blind or Severely Disabled (41 U.S.C. 46-48) may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protégé Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protégé firms that are qualified organizations employing the severely handicapped; and

(2) Former protégé firms that meet the criteria in Section 831(g)(4) of Public Law 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable. (DFARS 252.219-7003)

## **I171.06 INCENTIVE FOR SUBCONTRACTING WITH SMALL BUSINESSES, SMALL DISADVANTAGED BUSINESSES, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS (NOV 1995)**

(a) If the Contractor exceeds the small disadvantaged business, historically black college and university, minority institution goal of its subcontracting plan, at completion of contract performance, the Contractor will receive 1 percent of the excess.

(b) The Contractor will not receive this incentive if the Contracting Officer determines that exceeding the goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun or award of subcontracts planned but not disclosed in the subcontracting plan). Determinations made under this paragraph are not subject to the DISPUTES clause.

(c) If this is a cost contract, the limitations of FAR Subpart 15.9 may not be exceeded.

(d) This clause does not apply if the subcontracting plan is a plant, division, or company-wide commercial items plan.

(DFARS 252.219-7005)



**I171.07 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (AUG 1998)**

(a) **Failure to make a good faith effort to comply with the subcontracting plan**, as used in this subpart, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN, or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled DISPUTES, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that Government may have. (FAR 52.219-16)

**I176 COST ACCOUNTING STANDARDS (APR 1998)**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) **(CAS-covered Contracts Only).** By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modification to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the CHANGES clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; PROVIDED, that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the CHANGES clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any

**II76 (Cont'd) COST ACCOUNTING STANDARDS (APR 1998)**

increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904, or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirements shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (FAR 52.230-2)

**II76.03 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)**

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standards - Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR 9904.

(2) **(CAS-covered Contracts only).** If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the CHANGES clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that--

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (FAR 52.230-3)

**I176.05 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause.

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, COST ACCOUNTING STANDARDS; or subparagraph (a)(3) and subdivision (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or with subparagraph (a)(3) of the clause as FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or by subparagraph (a)(4) at FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, COST ACCOUNTING STANDARDS; or subparagraph (a)(3) and subdivision (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled COST ACCOUNTING STANDARDS or COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION, that have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or with subparagraph (a)(3) of the clause at FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION, and FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or by subparagraph (a)(4) of the clause at FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES, shall identify the cost impact on each separate CAS-covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with subparagraph (a)(3) or (a)(4) of the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

**I176.05 (Cont'd) ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)**

- (i) Subcontractor's name and subcontract number.
- (ii) Dollar amount and date of award.
- (iii) Name of Contractor making the award.
- (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.  
(FAR 52.230-6)

THE FOLLOWING CLAUSE IS APPLICABLE TO FACILITIES LOCATED IN THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS.

**I178 WASTE REDUCTION PROGRAM (MAY 1995)**

- (a) **DEFINITION. Waste reduction**, as used in this clause, means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.
- (b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, State, and local requirements.  
(FAR 52.223-10)

THE FOLLOWING CLAUSE IS APPLICABLE TO FACILITIES LOCATED IN THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS.

**I180 CLEAN AIR AND WATER (APR 1984)**

- (a) **Air Act**, as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).
- (1) **Clean air standards**, as used in this clause, means--
  - (i) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
  - (ii) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
  - (iii) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
  - (iv) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).
- (2) **Clean water standards**, as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (3) **Compliance**, as used in this clause, means compliance with --
  - (i) Clean air or water standards; or
  - (ii) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.
- (4) **Facility**, as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.
- (5) **Water Act**, as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

**I180 (Cont'd) CLEAN AIR AND WATER (APR 1984)**

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(FAR 52.223-2)

**I180.02 ENVIRONMENTAL PROTECTION (STORAGE) (DESC MAY 1987)**

The Contractor agrees to conform to all laws and regulations relating to the protection of the environment in effect on the date the contract is awarded, which are applicable to its operation in the performance of this contract. The Contractor further agrees to conform to any laws or regulations enacted after contract award that are applicable to its operation in the performance of this contract. In the event that conformance with any such new laws or regulations causes an increase or decrease in the operating cost, the Contractor and the Government will negotiate an equitable adjustment in the contract price. Failure to agree on an equitable adjustment in the contract price shall be a dispute concerning a question of fact within the meaning of the DISPUTES clause of this contract; however, nothing in this clause shall excuse the Contractor from implementing any such laws or regulations. The Contractor shall proceed with performance of this contract, unless so advised in writing by the Contracting Officer. (DESC 52.223-9F02)

**I181 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(a) **GENERAL.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organization structures, position descriptions, lines of progression, and seniority lists;

(v) Leave of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) **POSTINGS.**

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual or may lower the posted notice so that it may be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

**II81 (Cont'd) AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) **NONCOMPLIANCE.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **SUBCONTRACTS.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant to enforce the terms, including action for noncompliance. (FAR 52.222-36)

**II85.01 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)**

(a) **DEFINITIONS.** As used in this clause--

"Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

"United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) **CERTIFICATION.**

By submitting this offer, the offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the secondary Arab boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the secondary boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking. (DFARS 252.225-7031)

**II90.02 HAZARDOUS WASTE LIABILITY (OCT 1992)**

(a) **DEFINITIONS.** As used in this clause--

(1) **Hazardous waste** has the meaning given the term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls (PCB).

(2) **Polychlorinated biphenyls (PCB)** has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(b) Upon receipt of hazardous waste properly characterized pursuant to applicable laws and regulations, the Contractor agrees that it shall reimburse the Government for any penalties assessed against, all liabilities incurred by, costs incurred by, and damages suffered by, the Government that are caused by--

(1) The Contractor's breach of any term of the contract; or

(2) Any negligent or willful act or omission of the Contractor or employees of the Contractor, in the performance of the contract.

(c) Not later than 30 days after the award date of the contract, the Contractor shall demonstrate the ability to reimburse the Government as provided in paragraph (b) of this clause, by providing evidence to the Contracting Officer that--

(1) The facility has liability insurance meeting the requirements of 40 CFR 264.147; or

(2) The facility meets the financial assurance requirements of 40 CFR 264.147 for sudden and nonsudden accidental occurrences.

(d) This clause does not apply to--

(1) Performance of remedial action or corrective action under--

(i) The Defense Environmental Restoration Program;

(ii) Other programs or activities of the Department of Defense; or

(iii) Authorized State hazardous waste programs;

(2) Disposal of hazardous waste when the generation of such waste is incidental to the performance of the contract; or

(3) Disposal of ammunition or solid rocket motors.

(e) The Contractor shall include this clause, including this paragraph (e), in each subcontract under which the subcontractor receives hazardous waste from a defense facility. (DFARS 252.223-7005)

**II190.03 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)****(a) DEFINITIONS.** As used in this clause--

(1) **Storage** means a nontransitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

**(2) Toxic or hazardous materials** means--

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.  
(DFARS 252.223-7006)

**II190.05 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)**

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856. (FAR 52.223-5)

**II197 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)**

Notwithstanding the clause of this contract entitled SUBCONTRACTS, the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award. (FAR 52.222-28)

**II199 CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994)**

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding \$100,000 shall bear, at the time of submission, the following certificate given by an individual who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

\_\_\_\_\_  
(Official's Name)

\_\_\_\_\_  
(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to--

(1) Requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; or

**I199 (Cont'd) CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994)**

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410e has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act (41 U.S.C. 601 et seq.) but signed by an individual who is authorized to bind the Contractor and who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request, will satisfy the certification requirements of both statutes.

(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs that have already been reimbursed or that have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant criminal and civil penalties and fines. (DFARS 252.233-7000)

**I203 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)**

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract. (DFARS 252.231-7000)

**I209.01 OPTION TO RENEW (SERVICES) (DESC APR 1997)**

The Government shall have the option to renew this contract upon the same terms and conditions for one period of three years. The Government shall issue written notice of its exercise of this option to renew at least 30 days prior to the expiration date of this contract or any renewal thereof. (DESC 52.217-9F09)

**I209.03 EXTENSION PROVISION (STORAGE) (DESC SEP 1991)**

The Government shall have the right to extend this contract upon the same terms and conditions on a month-by-month basis for a total of no more than six months. Notice of extensions may be furnished any time prior to the expiration of this contract or any extensions thereof. The foregoing extensions may be exercised by the Government only if (a) a decision is made by the Government that the additional time is required to deplete the Government-owned stocks stored in the facility, (b) a contract for follow-on services is terminated for default by the Government prior to commencement of services, or (c) where the extension is required to sustain performance because of difficulties encountered in award of the follow-on contract. (DESC 52.217-9F05)

**THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.****I211 ORDERING (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from contract start date through contract completion date.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally by facsimile, or by electronic commerce methods only if authorized in the Schedule. (FAR 52.216-18)

**I225 PAYMENTS (APR 1984)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price. (FAR 52.232-1)



**I227.01 OBLIGATION OF FUNDS (MULTIYEAR) (DESC FEB 1985)**

The time within which the Government shall obligate funds pursuant to paragraph (a) of the LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS clause shall be at least 30 days prior to expiration of the first program year requirement or any subsequent renewal thereof. (DESC 52.232-9F09)

**I229 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract that exceed \$100,000. (FAR 52.203-6)

***THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.*****I230 COST CONTRACT - NO FEE (APR 1984)**

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(FAR 52.216-11)

If this document contains DoD partial small business set-aside items in the Schedule, the evaluation preference described in the following clause is not applicable to the non-set-aside portion of those DoD items, or to the unreserved portion of items partially reserved for contracting with the SBA under the 8(a) program. (The evaluation preference never applies to any items paid for by Federal Civil Agencies.)

**I233 RIGHT OF FIRST REFUSAL OF EMPLOYMENT (NOV 1991)**

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins. (FAR 52.207-3)

**I237.03 NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1994)**

(The full text of this clause is included in the Offeror Submission Package at Attachment 5.)

**I242 INTEGRITY OF UNIT PRICES (OCT 1997)**

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products. (FAR 52.215-14)

**I251 ANTI-KICKBACK PROCEDURES (JUL 1995)****(a) DEFINITIONS.**

(1) **Kickback**, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) **Person**, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) **Prime Contract**, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) **Prime Contractor**, as used in this clause, means a person who has entered into a prime contract with the United States.

(5) **Prime Contractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) **Subcontract**, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) **Subcontractor**, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) **Subcontractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

**(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act) prohibits any person from--**

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, monies withheld, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract that exceed \$100,000. (FAR 52.203-7)

**I255 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)**

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items. (DFARS 252.209-7000)

**I257 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1989)**

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control. (FAR 52.225-14)

**I400 CONTINUITY OF SERVICES (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. (FAR 52.237-3)

***THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.*****I400.02 LIMITATION OF COST (APR 1984)**

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that--

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(FAR 52.232-20)

**THE FOLLOWING CLAUSE IS APPLICABLE ONLY TO THE COST-REIMBURSEMENT LINE ITEMS. THE COST-REIMBURSEMENT PORTION IS NON-FEE-BEARING. THEREFORE, ANY REFERENCE TO REIMBURSEMENT OF FEE IS NOT APPLICABLE TO THIS CONTRACT.**

**I400.03 TERMINATION (COST-REIMBURSEMENT) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; PROVIDED, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

**I400.03 (Cont'd) TERMINATION (COST-REIMBURSEMENT) (SEP 1996)**

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the DISPUTES clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h), or (l) of this clause, the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee. (FAR 52.249-6)

**THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.****I400.05 CHANGES - COST-REIMBURSEMENT (ALT II) (APR 1984)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc).

**I400.05 (Cont'd) CHANGES - COST-REIMBURSEMENT (ALT II) (APR 1984)**

- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the LIMITATION OF COST or LIMITATION OF FUNDS clause of this contract. (FAR 52.243-2/ALT II)

**I400.07 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

- (a) Notwithstanding any other clause of this contract--
  - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and
  - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs. (FAR 52.242-1)

**THE FOLLOWING CLAUSE IS ONLY APPLICABLE TO THE COST-REIMBURSEMENT CONTRACT LINE ITEM(S). THE CLAUSE DOES NOT APPLY TO THE FIRM-FIXED PRICE CONTRACT LINE ITEM(S).**

**I400.08 EXCUSABLE DELAYS (APR 1984)**

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--
  - (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract. (FAR 52.249-14)

**I400.09 SUBCONTRACTS (ALT I) (AUG 1998)****(a) DEFINITIONS.** As used in this clause--

**Approved purchasing system** means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

**Consent to subcontract** means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

**Subcontract** means any contract, as defined FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

In the absence of competition, the Contractor shall provide rationale for price reasonableness determination (e.g., catalog/market price, previous price history, etc.) prior to placing the subcontract.

(f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason why cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

**I400.09 (Cont'd) SUBCONTRACTS (ALT I) (AUG 1998)**

- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

N/A

(FAR 52.244-2/ALT 1)

**I400.10 INSURANCE - LIABILITY TO THIRD PERSONS (MAR 1996)**

- (a) (1) Except as provided in subparagraph (2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.
- (2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; PROVIDED that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
- (3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.
- (b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.
- (c) The Contractor shall be reimbursed--
  - (1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and
  - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for--
    - (i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
    - (ii) Death or bodily injury.
- (d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--
  - (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
  - (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
  - (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of--
    - (i) All or substantially all of the Contractor's business;
    - (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
    - (iii) A separate and complete major industrial operation in connection with the performance of this contract.
- (f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; PROVIDED, that such cost is allowable under the Allowable Cost and Payment clause of this contract.
- (g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall--
  - (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and



**I400.10 (Cont'd) INSURANCE - LIABILITY TO THIRD PERSONS (MAR 1996)**

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation. (FAR 52.228-7)

**THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.****I400.13 ALLOWABLE COST AND PAYMENT (APR 1998)**

(a) **INVOICING.** The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

**(b) REIMBURSING COSTS.**

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; PROVIDED, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) **SMALL BUSINESS CONCERNS.** A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

**(d) FINAL INDIRECT COST RATES.**

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

(2) (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

**I400.13 (Cont'd) ALLOWABLE COST AND PAYMENT (APR 1998)**

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the DISPUTES clause.

(e) **BILLING RATES.** Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) **QUICK-CLOSEOUT PROCEDURES.** Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) **AUDIT.** At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) **FINAL PAYMENT.**

(1) Upon approval of a completion invoice or voucher, submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; PROVIDED, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date, or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(FAR 52.216-7)

**THE FOLLOWING CLAUSE APPLIES TO LINE ITEMS 0002-0004 ONLY.**

**I400.14 PENALTIES FOR UNALLOWABLE COSTS (MAY 1994)**

(a) **DEFINITION.**

"Proposal" means either--

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--

(i) Relates to any payment made on the basis of billing rates or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors that include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324, as amended by Section 818 of Public Law 102-484, which is implemented in Subpart 231.70 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Part 31 of the Federal Acquisition Regulation (FAR).

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a FAR or DFARS cost principle that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--

**I400.14 (Cont'd) PENALTIES FOR UNALLOWABLE COSTS (MAY 1994)**

- (1) The amount of the disallowed cost allocated to this contracts; plus
- (2) Simple interest, to be computed--

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled.

(ii) Using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 604, et seq.).

(g) Pursuant to the criteria in DFARS 231.7002-5, the Contracting Officer may waive the penalties in (d) or (e) of this clause.

(h) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(i) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost that has been paid by the Government to the Contractor. (DFARS 252.231-7001)

**I605.01 DISCLOSURE OF INFORMATION (DESC FEB 1992)**

The Contractor agrees to notify and obtain the verbal approval of the Contracting Officer prior to releasing any information to any third parties including the news media regarding any work under this contract except as required by law. The Contractor shall immediately notify the Contracting Officer of the receipt of any request by a third party for the disclosure of any information regarding this contract. This requirement shall apply to all subcontractors and project employees. The Contractor is required to include a similar clause in any subcontractor agreement.

(DESC 52.203-9F01)

**SECTION J - LIST OF ATTACHMENTS**

THE FOLLOWING DOCUMENTS, FORMS AND ATTACHMENTS ARE INCLUDED IN THIS SOLICITATION:

<b><u>TITLE</u></b>	<b><u>LOCATION</u></b>
<b>DD FORM 1707, INFORMATION TO OFFERORS OR QUOTERS</b>	<b>COVER SHEET</b>
<b>SF 33, SOLICITATION, OFFER AND AWARD</b>	<b>PAGE 1</b>
<b>DFSP POINT LOMA, CA</b>	
PERFORMANCE WORK STATEMENT	<b>ATTACHMENT 1</b>
MAPS	<b>ATTACHMENT 1A</b>
WAGE DETERMINATION	<b>ATTACHMENT 1B</b>
<b>DFSP PUGET SOUND, WA</b>	
PERFORMANCE WORK STATEMENT	<b>ATTACHMENT 2</b>
MAPS	<b>ATTACHMENT 2A</b>
WAGE DETERMINATION	<b>ATTACHMENT 2B</b>
<b>DFSP PEARL HARBOR, HI</b>	
PERFORMANCE WORK STATEMENT	<b>ATTACHMENT 3</b>
MAPS	<b>ATTACHMENT 3A</b>
WAGE DETERMINATION	<b>ATTACHMENT 3B</b>
<b>LOGISTICS FUND STATEMENT</b>	<b>ATTACHMENT 4</b>
<b>OFFEROR SUBMISSION PACKAGE</b>	<b>ATTACHMENT 5</b>

**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS**

(The full text of these clauses is included in the Offeror Submission Package at Attachment 5.)

- K1.01 SMALL BUSINESS PROGRAM REPRESENTATION (FEB 1998)**
- K1.01-4 SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (DoD CONTRACTS) (APR 1994)**
- K1.01-5 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984) (DEVIATION)**
- K1.01-6 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**
- K1.02 TYPE OF BUSINESS ORGANIZATION (OCT 1997)**
- K1.06 CONTRACTOR IDENTIFICATION NUMBER – DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996)**
- K7 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1998)**
- K10.01 CLEAN AIR AND WATER CERTIFICATION (APR 1984)**
- K15.03 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)**
- K33.01 AUTHORIZED NEGOTIATORS (DESC JAN 1998)**
- K41 WOMEN-OWNED BUSINESS (OCT 1995)**
- K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**
- K88 TAXPAYER IDENTIFICATION (JUN 1997)**
- K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)**
- K96 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

**SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERS OR QUOTERS****L1 STATEMENT AS TO AWARD (SERVICES) (DESC NOV 1990)**

Award will not be made on less than the service stated as the first program year requirements. (Program year is the first year of the contract beginning with the service start date.)

**L1.02 PROPOSAL ACCEPTANCE PERIOD (DESC NOV 1991)**

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of **198** calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in paragraph (c) above or within any extension thereof which has been agreed to by the offeror.

**L2.01 INSTRUCTIONS TO OFFERORS (RFP) (DESC OCT 1981)**

Offerors are expected to examine all sections of the solicitation and the Information to Offerors form. Failure to do so will be at offeror's risk. Each offeror shall furnish the information required by the solicitation. Offers and modifications thereto shall be signed and dated. The name and title of the person authorized to sign the offer is to be printed or typed on the offer. The offer shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. Erasures or other changes must be initialed by the person signing the offer. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope. (DESC 52.215-9F23)

**L2.05-8 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALT I) (OCT 1997)**

(a) **DEFINITIONS.** As used in this provision--

(1) **Discussions** are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

(2) **In writing** or **written** means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) **Proposal modification** is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award. Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

(4) **Time**, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturday, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) **AMENDMENTS TO SOLICITATIONS.** If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) **SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS.**

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals, and modifications to proposals shall be submitted in paper media in sealed envelopes or packages--

(i) Addressed to the office specified in the solicitation; and

(ii) Showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the prices set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic address if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

**L2.05-8 (Cont'd) INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALT I) (OCT 1997)****(3) LATE PROPOSALS AND REVISIONS.**

(i) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and--

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20<sup>th</sup> of the month must have been mailed by the 15<sup>th</sup>);

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term **working days** excludes weekends and U.S. Federal holidays;

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. **Postmark** means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offeror or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. **Postmark** has the same meaning as defined in paragraph (c)(3)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(3)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the FACSIMILE PROPOSALS provision. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars unless otherwise permitted by the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) **OFFER EXPIRATION DATE.** Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet.

**L2.05-8 (Cont'd) INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALT I) (OCT 1997)**

(e) **RESTRICTION ON DISCLOSURE AND USE OF DATA.** Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: THIS PROPOSAL INCLUDES DATA THAT SHALL NOT BE DISCLOSED OUTSIDE THE GOVERNMENT AND SHALL NOT BE DUPLICATED, USED, OR DISCLOSED -- IN WHOLE OR IN PART -- FOR ANY PURPOSE OTHER THAN TO EVALUATE THIS PROPOSAL. IF, HOWEVER, A CONTRACT IS AWARDED TO THIS OFFEROR AS A RESULT OF -- OR IN CONNECTION WITH -- THE SUBMISSION OF THIS DATA, THE GOVERNMENT SHALL HAVE THE RIGHT TO DUPLICATE, USE, OR DISCLOSE THE DATA TO THE EXTENT PROVIDED IN THE RESULTING CONTRACT. THIS RESTRICTION DOES NOT LIMIT THE GOVERNMENT'S RIGHT TO USE INFORMATION CONTAINED IN THIS DATA IF IT IS OBTAINED FROM ANOTHER SOURCE WITHOUT RESTRICTION. THE DATA SUBJECT TO THIS RESTRICTION ARE CONTAINED IN SHEETS (INSERT NUMBERS OR OTHER IDENTIFICATION OF SHEETS); and

(2) Mark each sheet of data it wishes to restrict with the following legend: USE OR DISCLOSURE OF DATA CONTAINED ON THIS SHEET IS SUBJECT TO THE RESTRICTION ON THE TITLE PAGE OF THIS PROPOSAL.

(f) **CONTRACT AWARD.**

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(FAR 52.215-1/Alt I)

**L2.11-2 FACSIMILE PROPOSALS (OCT 1997)**

(a) **DEFINITION. Facsimile proposal,** as used in this provision, means a proposal, revision, or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is **703-767-8506**.

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document--

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror;

and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal. (FAR 52.215-5)

**L2.21 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)**

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any DOD FAR Supplement Regulation (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation. (FAR 52.252-5)

**L2.25 PREPARATION OF OFFERS (APR 1984)**

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, offers shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price/cost and extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays. (FAR 52.215-13)

**L5 SERVICE OF PROTEST (AUG 1996)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from--

ATTN: DESC-PCA  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J. KINGMAN ROAD SUITE 4950  
FORT BELVOIR VA 22060-6222

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with GAO. (FAR 52.233-2)

**L5.01 AGENCY PROTESTS (DESC AUG 1997) - DLAD**

(a) Parties protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order 12979, with the DESC Commodity Business Unit Director.

(b) Protests filed with the Director, DESC Commodity Business Unit, pursuant to Executive Order 12979 should be addressed to the Contracting Officer, but should clearly state that they are an "Agency Level Protest under Executive Order 12979." The Contracting Officer will forward the protest to the DESC Director of the appropriate commodity business unit for a decision. (This process allows for a higher level decision on the initial protest, it is not a review of a Contracting Officer's decision on a protest filed with the Contracting Officer.)

(c) Absent a clear indication of the intent to file an agency level protest under Executive Order 12979, protests will be presumed to be protests to the Contracting Officer.

(d) To the maximum extent possible, all parties shall use their best efforts to resolve concerns at the Contracting Officer level through frank and open discussions. (DLAD 52.233-9000, revised)

**L11 POSTPONEMENT OF OPENING/CLOSING OF OFFERS (OCT 1982) DLAD**

If the opening/closing of offers is postponed because emergency or unanticipated events (such as, but not limited to, flood, fire, accident, weather condition, or strikes) result in closing the designated site for opening/closing of offers, so that the conduct of openings/closings as scheduled is impracticable, offers or modifications or withdrawal of offers received prior to the time of actual opening/closing will be considered as timely. Offers or modifications or withdrawals of offers received after the time of actual opening/closing of offers, when opening/closing of offers was postponed as provided above, will not be considered except as provided in FAR 52.214-7 or 52.215-10, as applicable. (DLAD 52.214-9000)



**L17 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (AUG 1998)**

(a) Copies of specifications, standards and data item descriptions cited in this solicitation may be obtained for a fee by submitting a request to the--

Department of Defense Single Stock Point (DoDSSP)  
Building 4, Section D  
700 Robbins Avenue  
Philadelphia, PA 19111-5094

Telephone: (215) 697-2667/2179  
Facsimile: (215) 697-1462.

(b) Order forms, pricing information, and customer support information may be obtained--

- (1) By telephone at (215) 697-2667/2179; or
- (2) Through the DoDSSP Internet site at <http://www.dodssp.daps.mil>.  
(FAR 52.211-2)

**L18 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (APR 1984) (DEVIATION)**

An award in the amount of \$10 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$10 million or more) are found, on the basis of a compliance evaluation, to be able to comply with the provisions of the EQUAL OPPORTUNITY clause of this solicitation. If the offeror's proposal is for a contract of \$10 million or more, each of the offerors and its known first tier subcontractors to whom the offeror intends to award a subcontract of \$10 million or more shall be subject to a compliance evaluation, unless within the preceding 24 months the Office of Federal Contract Clearance has conducted a compliance evaluation and found them to be in compliance with Executive Order 11246. (FAR 52.222-24)

**L23 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., the VETS-100 report required by FAR clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has submitted the most recent report required by 38 U.S.C. 4212(d). (DFARS 252.209-7003)

**L54.01 SITE VISIT (APR 1984)**

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. (FAR 52.237-1)

**L66 RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)**

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall--

(a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets \_\_\_\_\_ and \_\_\_\_\_; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."  
(FAR 52.215-12)

**L74 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a **firm, fixed priced contract, with cost reimbursement provisions resulting from this solicitation.** (FAR 52.216-1)

**L82 WAGE DETERMINATION (DESC JAN 1986)**

This procurement is subject to Wage Determination Number \_\_\_\*\_\_\_ dated \_\_\_\*\_\_\_ as determined by the Administrator, Wage and Hour Public Contracts Division, U.S. Department of Labor. Register of Wage Determination and Fringe Benefits under the McNamara-O'Hara Service Contract Act is attached and made a part of this solicitation.

*DFSP Point Loma, CA	No. 94-2057, Rev 19	Dated 7/23/1998
*DFSP Puget Sound, WA	No. 94-2559, Rev. 14	Dated 9/18/1998
*DFSP Pearl Harbor, HI	No. 94-2153, Rev. 14	Dated 7/08/1998

**L87 CONDITIONS FOR MULTIYEAR OFFERS (DESC FEB 1990)**

(a) Offerors must submit a price for the total quantity of the first year requirement. If you do not offer on the first year requirement, your bid/proposal will not be considered. Offerors are encouraged to submit offers on both the one-year and the multiyear requirements.

(b) If only one responsive offer on the multiyear requirement is received from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear quantities and to make award only for the first year requirement.

(c) Offerors are advised that the offered price shall be the same for each year of the multiyear requirement.

(d) If it is determined prior to award that only the first year quantities are actually required, the Government reserves the right to evaluate offers and make award solely on the basis of prices offered on the first year requirement.

(e) Awards will not be made for less than the one-year requirement, except as provided by the CONTRACT AWARD provision if this is a negotiated acquisition.  
(DESC 52.207-9F04)

**L96 ADMINISTRATION OF THE SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PROGRAM CLAUSES (DESC MAY 1996)**

The SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PROGRAM clauses contained in any contract awarded under this solicitation will be administered by the cognizant Defense Contract Management District.  
(DESC 52.242-9F06)

**L112 NOTICE OF COST COMPARISON (NEGOTIATED) (FEB 1993)**

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economically alternative after (i) completion of a public review period of 20 working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of 20 working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) During the public review period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

**L112 (Cont'd) NOTICE OF COST COMPARISON (NEGOTIATED) (FEB 1993)**

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF PROPOSALS OR QUOTATIONS provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered. (FAR 52.207-2)

**L197.100 PREPROPOSAL CONFERENCES/SITE VISITS (DESC OCT 1998)**

Preproposal conferences/site visits will be held on the following dates at the designated locations.

DFSP Point Loma, CA	November 9-10, 1998
DFSP Puget Sound, WA	November 12-13, 1998
DFSP Pearl Harbor, HI	November 16-18, 1998

If you wish to attend, please fax (703-767-9338) or e-mail (croberson@desc.dla.mil) your name, title, company name and address, phone number, e-mail address, and any questions or issues you wish addressed at the conference(s). Also specify which conference(s)/site visit(s) you wish to attend. This information must be received by **October 30, 1998**.

**L201.100 INSTRUCTIONS TO OFFERORS (GOCO) (DESC OCT 1998)**

Offerors' proposals must be divided into the following clearly labeled four parts:

(a) **CERTIFICATION PACKAGE(S) (Submit one original and a copy for each location offered on.)** Complete all required representations and certifications, and provide a proposed price in the SERVICES TO BE FURNISHED AND PRICES clause. The offeror shall break down the offer price into labor, equipment, supplies, G&A and profit (per line item), etc. Unless otherwise specified within Section C-2.0, all functions described in the PWS shall be included in the firm fixed price for CLIN 0001. Please note that the firm fixed price shall include all effort required to recognize and initiate response actions for those supplies/services that are reimbursable under CLINs 0002-0004..

(b) **OPERATIONAL CAPABILITY (TECHNICAL PROPOSAL) (Submit an original and three copies.)**

(1) Operation and Staffing Plan: Offer submission shall be comprised of the following:

(i) Provide an organization chart (wire diagram) showing employee classifications (use applicable wage determination classifications), number of employees within each classification (identified as full-time or part-time), and reporting chain of command. Address each of the sites that comprise the DFSP. For those wage determination categories that may require graduated levels of experience/responsibilities (e.g., FDSO Leader, FDSO Senior, FDSO Trainee, etc.), identify category titles and provide accompanying wage rates for those graduated levels. (See attachment 5-1 to the Offeror Submission Package for an example.)

(ii) Provide job descriptions for each employee classification. Include knowledge, skills, abilities, and experience requirements for each employee classification. For those wage determination categories proposed to include graduated levels as described in (b)(1)(i) above, include discriminating factors that separate each level within each affected wage determination category.

(iii) Provide a matrix identifying by type of operation how many of what type employee will be participating in each operation. (See attachment 5-2 to the Offeror Submission Package for an example.)

(iv) Provide a **conceptual\*** description of procedures for receipt, issue and transfer operations by mode.

Address plans for responding to no-notice or short-notice fleet requirements per Section C-1.8 of the PWS. Specify required response time (a response time in excess of 4 hours will render the entire offer unacceptable).

\*A **detailed** Plan shall be provided within 60 days after performance start per Section C-1.5 of the PWS.

(2) Personnel Qualifications/Experience/Education: Provide resumes for the Corporate Fuels Executive, the Terminal Superintendent, and the Assistant Terminal Superintendent (as applicable). Resumes must clearly demonstrate that nominee meets the minimum qualifications stated in the Performance Work Statement (PWS) and should also provide any other relevant qualifications and/or experience (e.g., spill response training/experience/certifications). If these proposed employees do not meet the minimum qualifications identified in the PWS, the offer may be rejected as unacceptable. As a cover summary of the resumes, fill in the matrix provided at attachment 5-3 to the Offeror Submission Package.

(3) Contract Compliance Plan: Provide a comprehensive and detailed Plan for ensuring contract compliance. Describe any internal inspection/control systems and reporting procedures and identify personnel responsible for monitoring this Plan. The Plan shall address methods/procedures for meeting the performance standards specified in the PWS. This Plan shall be utilized by the Contractor to monitor and assess contract compliance.

(4) Maintenance Plan: Provide a **conceptual\*** Plan that describes a systematic approach to accomplishing periodic scheduled inspections and repairs designed to preserve and maintain equipment, apparatus, and facilities in such condition that they may be effectively used for their intended purposes. This Plan must address Planning, scheduling, conducting and documenting (i.e., automated or manual) required maintenance and must address the requirements of Section C-2.4 of the PWS. This Plan is limited to 20 pages.

\*A **detailed** Plan shall be provided within 60 days after performance start per Section C-1.5 of the PWS.

(5) Product Quality Surveillance (PQS) Plan: Provide a comprehensive PQS Plan that describes detailed procedures for insuring products remain on-specification. Include a discussion of sampling and testing methods and equipment as well as consequences of unacceptable test results. Describe how product QS data will be documented and reported. The Plan shall incorporate the requirements specified in Section C-2.2 of the PWS. Identify responsible party(ies) for these functions. This Plan is limited to 30 pages.

**L201.100 (Cont'd) INSTRUCTIONS TO OFFERORS (GOCO) (DESC OCT 1998)**

(6) Product Inventory Control and Accountability Plan: Provide a **conceptual\*** Plan that describes gauging frequency and procedures and reconciliation of shipped quantities with received quantities. This Plan shall address the requirements of Clause I119.04 and Section C-2.3 of the PWS. This Plan is limited to 5 pages.

\*A **detailed** Plan shall be provided within 60 days after contract award per Section C-1.5 of the PWS.

(7) Security Plan: Provide a **conceptual\*** Security Plan for ensuring the security of the terminal. Include a discussion of access control, security of Government property, environmental first response responsibilities, and documentation of terminal activities/events (e.g., visitor log, event log, detex clock tapes, videotapes, etc.) Provide a guard shift schedule that identifies whether employee is classified as Guard I or Guard II (per wage determination description) and whether this function is accomplished with prime contractor (offeror) personnel or by subcontract. This Plan is limited to 5 pages.

\*A **detailed** Plan shall be provided within 30 days after contract award per Section C-1.5 of the PWS.

(8) Training Plan: Provide a **conceptual\*** Training Plan for accomplishing required training. The Plan must identify a clear approach to planning, scheduling, conducting and documenting required training and qualifying personnel in fuel handling operations. This Plan is limited to 10 pages.

\*A **detailed** Plan shall be provided within 60 days after contract award per Section C-1.5 of the PWS.

(9) Safety Plan: Provide a **conceptual\*** Safety Plan that addresses applicable laws and regulations. This Plan must include a brief description of applicable requirements, including those identified in Section C-2.6 of the PWS. The discussion should demonstrate offeror's understanding of occupational safety and health standards associated with required services. Training requirements associated with the Safety Plan must be covered within the Training Plan in (8) above. The Safety Plan is limited to 10 pages.

\*A **detailed** Plan shall be provided within 60 days after contract award per Section C-1.5 of the PWS.

(10) Equipment/Vehicles: Provide the type and number of contractor-furnished equipment/vehicles. Include pertinent information such as age, condition, capability to perform required function.

(c) **PAST PERFORMANCE\*\* (Submit an original and one copy.)** The offeror shall provide the following information for all contracts and subcontracts completed in the last three years and those in progress that are related to the proposed contract.

- (1) Name and address of contracting activity;
- (2) Points of contact (names of Contracting Officer, Contracting Officer's Representative, Administrative Contracting Officer, program manager, etc., as applicable) and phone numbers of activity personnel;
- (3) Contract number;
- (4) Contract type and dollar value;
- (5) Brief description of the work; and
- (6) Information on any significant problems encountered and corrective actions taken.

(d) **SUBCONTRACTING PROCEDURES/INTENTIONS\*\* (Submit an original and one copy.)**

(1) Purchasing Standard Operational Procedures: Describe procedures for subcontracting supplies/services under the cost reimbursable line items. Include plan for locating qualified vendors and means of ensuring prices paid are fair and reasonable. Describe documentation procedures for price reasonableness determination.

(2) Socioeconomic Plan. Describe efforts to ensure that small, small disadvantaged, and women-owned small business concerns will have an equal opportunity to compete for subcontracts under any resulting contract. Include names of any known subcontractors. Describe future plans for developing additional subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns during the contract period. Identify the proportion of your proposal, as a percentage of dollars, that will be subcontracted to small, small disadvantaged, and women-owned small business concerns.

\*\*The Government is not required to submit these Plans.

(DESC 52.204-9F03)

**L203 HANDCARRIED OFFERS AND EXPRESS DELIVERY SERVICE (DESC JAN 1998)**

(a) Any handcarried offer must be received at the depository indicated on the Standard Form (SF) 33 or SF 1449 of this solicitation by the date and time specified for receipt of offers. Evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the solicitation wrapper or other documentary evidence of receipt maintained by the installation.

(b) Offers delivered by an express delivery service will be considered "handcarried." Therefore, bidders/offerors that respond to this solicitation using an express delivery service must ensure that the express delivery service "handcarries" the offer to the depository indicated on the SF 33 or SF 1449.

(c) The term **express delivery service** does not include Express Mail delivered by the United States Postal Service. Express Mail will be considered "mail" under the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS provision or the Late Offers paragraph of the INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS or INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITIONS provision.

(DESC 52.252-9F01)

**L205 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC 1991)**

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code must be for that name and address. Enter CAGE before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Services Center (DLSC). The Contracting Officer will--

**L205 (Cont'd) COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC 1991)**

- (1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;
- (2) Complete section A and forward the form to DLSC; and
- (3) Notify the Contractor of its assigned CAGE code.
- (c) Do not delay submission of the offer pending receipt of a CAGE code. (DFARS 252.204-7001)

**SECTION M - EVALUATION FACTORS FOR AWARD****M2.03-1 SOCIOECONOMIC EVALUATION (OCT 1996) - DLAD**

The Socioeconomic Proposal provided by the offeror under 52.215-9002 will be evaluated on a comparative basis among all offerors. An offeror that proposes a higher percentage, complexity level, and variety of participation by small, small disadvantaged and women-owned small businesses combined, generally will receive a higher rating on this factor. An offeror's efforts to develop additional opportunities for small, small disadvantaged and women-owned small businesses will also be comparatively evaluated with the proposals of other offerors. Offerors' proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the Contractor has adhered to its socioeconomic plan. This plan will be monitored by the cognizant Defense Contract Management Command's small business office as a means of assisting the Contracting Officer in determining how well the Contractor has in fact performed. This determination will then be used as a consideration prior to option exercise and future source selection decisions. Past performance on prior contracts in subcontracting and assisting small, small disadvantaged, and women-owned small businesses shall be a part of past performance evaluation.

(DLAD 52.215-9003)

The following evaluation provision may be used after all other evaluation criteria have been applied.

**M43.01 EVALUATION OF OPTIONS (DESC MAR 1982)**

- (a) Proposals will be evaluated for purposes of award by adding the total price for all option periods to the total price for the basic period. Evaluation of options will not obligate the Government to exercise the options.
- (b) Any proposal that is materially unbalanced as to prices for basic option periods may be rejected as non-responsive. An unbalanced offer is one that is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.
- (c) Options will be evaluated at the highest option price offered for each specified option period.

**M43.05 EVALUATION OF OPTIONS (JUL 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise option(s)

(FAR 52.217-5)

**M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DESC APR 1997)**

- (a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.
- (b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either--
- (1) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or
- (2) The exception/deviation is acceptable.
- (c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).
- (d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.
- (e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

**M100.100 EVALUATION OF OFFERS (GOVERNMENT-OWNED/CONTRACTOR-OPERATED TERMINALS) (DESC OCT 1998)**

(a) Offers will be evaluated using formal source selection procedures. A team of Government personnel will evaluate the offers and the final selection will be made by the Source Selection Authority.

(b) Offers will first be evaluated to determine if they meet the Government's minimum qualifications. Offers that meet the Government's minimum qualifications will then be evaluated based on the following factors, listed in descending order of importance.

(1) Operational Capability. Within this factor are the following subfactors, which are listed in descending order of importance (plans that are listed within the same subparagraph are equally important):

- (i) Operation and Staffing Plan; Personnel Qualifications/Experience/Education
- (ii) Contract Compliance Plan
- (iii) Maintenance Plan; Product Quality Surveillance Plan; Product Inventory Control and Accountability Plan
- (iv) Security Plan; Training Plan; Safety Plan
- (v) Equipment/Vehicles

(2) Past Performance\*. Past performance will be evaluated using reference data provided by the Contractor under paragraph (c) of Clause L201.100 INSTRUCTIONS TO OFFERORS (GOCO). The Government reserves the right to consider any additional information on the offeror obtained through other means.

(3) Price. The lowest price will be determined by comparing the products obtained by multiplying each acceptable offeror's monthly service charge (CLIN 0001) by 60.

(4) Subcontracting\*. Within this factor are the following subfactors, which are listed in descending order of importance.

(i) Purchasing Procedures: Evaluation of this subfactor will consider planned efforts for locating qualified vendors and for ensuring subcontract prices paid under the cost reimbursable line items are fair and reasonable. These procedures will be monitored to assist the Contracting Officer in determining how well the Contractor has followed the procedures.

(ii) Socioeconomic Plan: Evaluation of this subfactor will consider the percentage, complexity level, and variety of planned subcontract participation by small, small disadvantaged and women-owned small businesses combined. An offeror's efforts to develop additional opportunities for small, small disadvantaged and women-owned small businesses will also be considered. Subcontract awards will be monitored during contract performance to determine how well the Contractor has adhered to its Plan. This determination will then be used as a consideration prior to future source selection decisions.

(c) All offers will be evaluated in accordance with OMB Circular A-76, as described here. After an evaluation of industry offers and the determination of the best value industry offer, the Source Selection Authority will compare the technical proposal of that offer with the technical proposal of the Government's offer. If the Government's technical proposal does not achieve the same level of performance and performance quality as the best value industry offer, the Government may revise its technical proposal to achieve that level. The Government must also make any concomitant changes to its in-house cost estimate (IHCE). This assures that the IHCE is based upon the same scope of work and performance level as the best value industry offer. If the best value industry offered price is lower than the Government's proposal (taking into consideration the minimum cost differential requirement\*\*), the industry offeror is selected to perform the commercial activity.

\*Since the Government is constrained by regulation, these factors will only be used to compare industry offers.

\*\*The minimum differential is the lesser of 10 percent of the personnel costs in the Government IHCE or \$10 million over the performance period.  
(DFSC 52.215-9F14)

**NOTE: No "all or none" offers will be accepted. The three locations included in this solicitation are under three separate cost comparison studies and will be evaluated separately. Offerors may offer on one, two or all of the locations.**